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**Analisis Yuridis Peraturan Daerah Provinsi Sumatera Barat Nomor 11 Tahun 2001
Tentang Pencegahan dan Pemberantasan Maksiat Terhadap *Lesbi, Gay, Biseksual, dan
Transgender (LGBT)***

Penulis: Bintang Melbi Alfina, Hazimah Suherwan, Rivka Dersel Handayani, dan Anggun
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1. Pendahuluan

1.1. Latar Belakang

Keberagaman budaya dan perkembangan zaman yang semakin hari semakin besar membuat budaya-budaya asing masuk tanpa ada batasan yang jelas, sehingga membuat masyarakat dituntut secara tidak langsung untuk memerlukan pemahaman, pemikiran dan ilmu yang luas dalam memfilterisasi segala macam hal yang ada. Hal ini dikarena, jika kita tidak dapat melakukan filterisasi atau membedakan suatu hal yang sepatutnya dan tidak sepatutnya dicontoh sesuai dengan norma yang selama ini kita patuhi dan teladani, maka akan menjadi suatu gejala hukum yang nantinya akan menghasilkan akibat hukum.

Salah satu yang menjadi isu pembicaraan atau yang mulai beredar dalam masyarakat yaitu *Lesbi, Gay, Biseksual, dan Transgender* atau yang bisa disingkat LGBT. Hal ini secara tidak langsung termasuk kepada perilaku menyimpang, penyimpangan sosial ini pun terjadi ketika adanya perubahan pada nilai-nilai norma dan sosial masyarakat kepada arah yang tidak wajar. Seperti berubahnya orientasi ketertarikan seorang pria, yang secara alamiah ia akan tertarik pada “wanita” namun kini menjadi tertarik kepada sesama jenis begitupun sebaliknya. Pernyataan yang menyatakan bahwa dirinya adalah seorang wanita padahal secara fisik ia adalah seorang pria, ini menimbulkan krisis identitas yang secara tidak langsung merupakan suatu penyimpangan sosial.

Adanya LGBT sangat bertentangan dengan landasan negara Indonesia, yaitu Pancasila. Nilai-nilai dan norma yang ada pada pancasila menjadi rusak dengan keberadaan LGBT, sebagaimana contoh dalam sila pertama yang berbunyi: “Ketuhanan Yang Maha Esa.” Hal ini didasarkan karena manusia yang merupakan ciptaan tuhan

yang telah diciptakan sebaik-baik rupa, dengan identitas yang jelas antara pria dan wanita, dan diciptakan berpasang-pasangan sejak awal mula manusia itu diciptakan, akan tetapi hal ini dilanggar sehingga terjadi penyimpangan dengan adanya keberadaan LGBT. Selanjutnya pada Undang-Undang Negara Republik Indonesia Tahun 1945 yang merupakan landasan fondasi hukum di Indonesia dimana terdapat kata: “DENGAN RAHMAT TUHAN YANG MAHA ESA.”¹ Dalam hal ini adanya penekanan bahwasanya Indonesia merupakan negara yang berlandaskan kepada Tuhan dalam menjalankan negaranya, pernyataan ini diiringi oleh Pasal 29 ayat (1) yang berbunyi: “Negara berdasar Ketuhanan Yang Maha Esa,” terjadinya penekanan moral ketuhanan dalam fondasi hukum di Indonesia. Berdasarkan landasan hukum dapat disimpulkan bahwa secara tidak langsung baik itu negara dan masyarakat Indonesia berpegang teguh pada aturan agama yang dianut oleh setiap orang menurut kepercayaannya masing-masing.

Selain itu, LGBT juga memberikan dampak pada kesehatan manusia. Menurut laporan Badan Narkotika Nasional (BNN), sepanjang 2022 ada 52.955 kasus infeksi *Human Immunodeficiency Virus* atau biasa kita sebut HIV. Dalam hasil penelitian tersebut terdapat sebanyak 27,54% atau 14.589 kasus HIV itu berkaitan dengan faktor risiko homoseksual². Berdasarkan JSA (Jurnal Sosiologi Andalas): Volume 8, No. 2 (Oktober) 2022, wacana bahwa maksiat adalah sumber bencana alam sering diulang-ulang oleh para politisi. Salah satu politisi Nasrul Abit mengungkapkan sebanyak 18000 orang pelaku LGBT di Sumatera Barat, hal ini menjadi angka terbanyak di Indonesia.³ Ia berpendapat bahwa perilaku LGBT tidaklah sesuai dengan budaya Minangkabau dan berisiko terhadap resiko penularan HIV/ AIDS. Hubungan LGBT menjerumuskan pada penyimpangan hubungan seksual, terjadinya penyimpangan seksual ini menyebabkan hadirnya penyakit kelamin akibat perilaku seksual yang bebas dan tak wajar yang menyebabkan terjadinya infeksi yang parah pada alat kelamin dan

¹ Pembukaan Undang-Undang Negara Republik Indonesia Tahun 1945.

² <https://databoks.katadata.co.id/datapublish/2023/07/04/ada-52-ribu-kasus-hiv-di-indonesia-pada-2022-homoseksual-paling-berisiko> diakses pada tanggal 23 April 2024, pukul 20:23 WIB.

³ Jurnal Sosiologi Andalas Volume 8, No. 2 (Oktober) 2022. Berjudul Kepanikan Moral dan Politics of Moral di Sumatera Barat

sejauh ini belum ada obat yang secara signifikan dapat menyembuhkan berbagai penyakit yang disebabkan oleh hubungan seksual yang bebas.

1.2. Rumusan Masalah

1. Bagaimana pengaturan serta efektivitas pelaksanaan aturan tersebut terkait permasalahan Lesbian, Gay, Biseksual, Transgender (LGBT) di Sumatera Barat?
2. Bagaimana upaya Pemerintah Daerah kota Padang dalam mengatasi Kasus Lesbian, Gay, Biseksual, Transgender (LGBT) yang marak terjadi di Sumatera Barat?

2. Pembahasan

2.1. Aturan hukum terkait permasalahan LGBT dan norma hukum yang ada di tengah masyarakat Sumatera Barat

Berdasarkan Pasal 1 Deklarasi Universal Hak Asasi Manusia menyatakan bahwa, “Seluruh manusia dilahirkan secara bebas dan memiliki persamaan dalam martabat dan hak”.⁴ Selanjutnya dalam Laporan Tahunan *United Nations High Commissioner for Human Rights* tentang *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity* dinyatakan bahwa setiap orang disini termasuk orang-orang *lesbian, gay, bisexual* dan *transgender*.⁵ Dalam pemenuhan hak asasi manusia tentu saja tidak melarang atau membatasi terkait hak-hak kemanusiaan bagi setiap orang terutama bagi LGBT. Akan tetapi, hal ini harus dipertimbangkan kembali dalam asas ketuhanan yang mana Tuhan merupakan suatu esensi yang agung tentulah keberadaan-Nya diatas segalanya. Sebagai manusia yang merupakan ciptaan tuhan mewajibkan kita untuk mematuhi aturannya secara tidak langsung dan memahami secara alamiah apa yang menjadi hak dan kewajiban serta makna dari manusia itu sendiri.

LGBT ini sendiri sangat bertentangan dengan landasan negara Indonesia, yaitu Pancasila terutama pada sila pertama yang berbunyi: “Ketuhanan Yang Maha Esa.” Hal

⁴ Declaration of Human Rights.

⁵ <https://icjr.or.id/icjr-kritik-pernyataan-komnas-ham-tentang-pelarangan-lgbt-tidak-melanggar-ham/> diakses pada tanggal 23 April 2024, Jam 20:10.

ini didasarkan karena manusia yang merupakan ciptaan tuhan yang telah diciptakan sebaik-baik rupa, dengan identitas yang jelas antara pria dan wanita, dan diciptakan berpasang-pasangan sejak awal mula manusia itu diciptakan, akan tetapi hal ini dilanggar serta telah terjadi penyimpangan dengan adanya keberadaan LGBT ini. Selanjutnya pada Undang-Undang Negara Republik Indonesia Tahun 1945 yang merupakan landasan fondasi hukum di Indonesia. Dalam Undang-Undang Negara Republik Indonesia Tahun 1945 yaitu pada kata “DENGAN RAHMAT TUHAN YANG MAHA ESA” disini dapat terlihat adanya penekanan bahwasanya Indonesia merupakan negara yang berlandaskan kepada Tuhan dalam menjalankan negaranya, lalu disusul pada Pasal 29 ayat (1) yang berbunyi “Negara berdasar Ketuhanan Y.M.E” terjadinya penekanan moral ketuhanan dalam fondasi hukum di Indonesia, oleh karena itu secara tidak langsung baik itu negara dan masyarakat Indonesia berpegang teguh pada aturan agama yang dianut oleh setiap orang menurut kepercayaannya masing-masing.

Pada dasarnya pancasila merupakan *Grundnorm* atau norma dasar dalam terciptanya suatu aturan hukum dan hal ini menjadi landasan untuk selanjutnya dalam membuat Undang-undang lainnya. Tentu saja undang-undang di bawahnya tidak boleh bertentangan dengan norma dasar ini. Oleh karena itu, keberadaan LGBT sangat tidak sesuai dengan norma-norma dan nilai keluhuran di Indonesia.

Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan pada Pasal 1 berbunyi: “Perkawinan ialah ikatan lahir batin antara seorang pria dengan seorang wanita sebagai suami istri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha esa.” Lalu pada Pasal 2 ayat (1): “Perkawinan adalah sah, apabila dilakukan menurut hukum masing-masing agamanya dan kepercayaannya itu.”⁶ Dari aturan hukum tersebut tertera dengan jelas bahwa dalam suatu hubungan pernikahan yang diakui dalam berwarga negara di Indonesia adalah seorang pria dan seorang wanita, dan pernikahan dapat dilaksanakan menurut kepercayaan agamanya masing-masing, akan tetapi dengan jelas bahwasanya dalam setiap agama dengan jelas menolak LGBT karena tidak sesuai dengan kaidah syariat

⁶ Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan.

beragama. Oleh karena itu hal ini menjadi daya tolak ukur mengapa LGBT sangat sulit diberikan izin atau diperbolehkan untuk berada di Indonesia.

Disamping itu, juga terdapat pengaturan lainnya yang secara tidak langsung atau secara implisit mengatur tentang LGBT, salah satunya yaitu dalam Kitab Undang-Undang Hukum Pidana yakni tepatnya pada Pasal 292 dan Pasal 293 KUHP yang mana dimuat ketentuan bahwa larangan terhadap orang dewasa yang melakukan perbuatan cabul dengan orang lain sesama jenis kelamin yang diketahuinya atau sepatutnya diduganya belum dewasa. Berdasarkan pasal tersebut dapat diketahui bahwa belum ada penafsiran secara tersurat terkait dengan LGBT itu sendiri, namun saat ini terhadap pasal tersebut sering dilakukan interpretasi secara luas untuk menindak perilaku LGBT. Selain itu, terkait dengan LGBT ini juga diatur dalam Fatwa MUI Nomor 57 Tahun 2014 tentang Lesbian, Gay, Sodomi dan Pencabulan, yang mana pada fatwa ini merumuskan adanya LGBT merupakan suatu aktivitas yang diharamkan untuk dilakukan dan juga sebagai salah satu bentuk kejahatan.

Adapun untuk daerah Sumatera Barat pada dasarnya telah terdapat peraturan daerah yang secara tidak langsung berkaitan dengan LGBT, yaitu pada Peraturan Daerah Sumatera Barat No. 11 Tahun 2001 tentang Pencegahan dan Pemberantasan Maksiat. Walaupun peraturan daerah ini dibentuk pada tahun 2001. Namun, apabila dilakukan penafsiran maka adanya undang-undang ini telah mengatur beberapa norma yang berkaitan dengan LGBT. Pertama, pada Pasal 1 huruf d Peraturan Daerah Sumatera Barat No. 11 Tahun 2001 tentang Pencegahan dan Pemberantasan Maksiat yang mengatur bahwa, “Maksiat adalah setiap tindakan yang merusak sendi-sendi kehidupan sosial kemasyarakatan dan melanggar norma-norma agama dan adat, baik yang telah diatur oleh Peraturan Perundang-undangan atau belum.” Apabila ditelaah lebih lanjut, LGBT dapat digolongkan menjadi salah satu bentuk tindakan maksiat, yakni telah merusak sendi kehidupan sosial masyarakat, norma agama dan adat. Hal ini dapat dilihat dari adanya masyarakat adat minangkabau yang memegang teguh filosofi hidup, yaitu “adat basandi syarak, syarak basandi kitabullah”. Oleh karena itu, masyarakat adat minangkabau sangat menghormati dan melaksanakan nilai agama dalam kehidupan sehari-harinya. Walaupun belum diatur secara eksplisit dalam peraturan perundang-undangan namun munculnya LGBT ini tentunya telah dipandang

sebagai suatu tindakan maksiat karena telah merusak sendi kehidupan sosial karena telah bertentangan dengan nilai adat yang bersendikan pada nilai agama.

Kedua, pada Pasal 1 huruf e Peraturan Daerah Sumatera Barat No. 11 Tahun 2001 tentang Pencegahan dan Pemberantasan Maksiat yang mengatur bahwa, “Perzinaan adalah hubungan seksual diluar ikatan pernikahan, baik dilakukan dengan suka sama suka, maupun secara paksa oleh salah satu pihak dengan adanya pemberian atau janji pemberian, baik dilakukan oleh yang berlainan jenis kelamin atau sarna.” Adapun pada pasal ini juga memiliki keterkaitan dengan LGBT, yaitu pada aspek hubungan seksual yang dilakukan oleh sesama gender. Yang mana sesuai dengan definisi dari LGBT itu sendiri menurut Swain dan Keith W. yang mengartikan LGBT sebagai suatu kelompok manusia yang mempunyai kepuasan berhubungan seksual sesama gender atau biseksual. Oleh karena itu, pada pasal ini turut mengatur bahwa adanya tindakan LGBT tidak hanya digolongkan pada perilaku maksiat tetapi lebih lanjut telah menjadi suatu perzinaan.

Adapun berdasarkan Pasal 3 Peraturan Daerah Sumatera Barat No. 11 Tahun 2001 tentang Pencegahan dan Pemberantasan Maksiat menjelaskan bahwa pembentukan pengaturan ini dengan beberapa tujuan diantaranya yaitu:

a. Menerapkan prinsip dan filosofi: “Adat Basandi Syarak, Syarak Basandi Kitabullah”

Peraturan daerah dibentuk bertujuan untuk peraturan daerah ini dapat menjaga dan tetap mempertahankan berlangsungnya prinsip: “Adat Basandi Syarak, Syarak Basandi Kitabullah.”

b. Melindungi masyarakat terhadap adanya berbagai bentuk kegiatan dan/atau perbuatan maksiat

Bertujuan agar dapat melindungi masyarakat dari perilaku atau tindakan masyarakat yang bertentangan dengan nilai agama ataupun nilai adat yang pada akhirnya dapat menimbulkan ketidakseimbangan di tengah masyarakat.

c. Mendukung penegakan hukum yang optimal terhadap ketentuan Peraturan Perundang-undangan yang berhubungan dengan kegiatan dan/atau perbuatan maksiat yang terjadi

Pembentukannya bertujuan agar mendukung penegakan hukum dengan membentuk peraturan daerah yang menjadi salah satu landasan hukum yang digunakan dalam melakukan penegakan hukum terhadap pelanggar maksiat.

- d. Meningkatkan peran serta masyarakat dalam mencegah dan memberantas terjadinya serta meluasnya perbuatan maksiat

Dengan adanya peraturan daerah ini ditujukan agar dapat meningkatkan keterlibatan masyarakat secara langsung dalam melakukan pencegahan ataupun pemberantasan terhadap perbuatan maksiat. Banyaknya pendapat mengenai pelaku LGBT harus dikenakan pidana menimbulkan berbagai polemik. LGBT dapat digolongkan pada kriteria amoral yaitu perbuatan cabul LGBT, namun harus dapat memperhitungkan pembuktiannya, definisi yang jelas, bagaimana penegakan hukum terhadap pelanggaran perbuatan cabul LGBT. Selain itu harus jelas sarana hukum lainnya yang dapat memberikan hasil yang lebih baik dalam mengatasi perilaku LGBT. Memperhatikan dari berbagai sudut pandang baik itu budaya, suku, adat, agama, bahkan hukum negara, LGBT tidaklah diterima keberadaannya di wilayah negara republik Indonesia ini, akan tetapi meskipun begitu masih belum ada aturan hukum yang menyatakan secara tegas serta mengimplementasikan dalam nilai masyarakat.

Dengan demikian, maka dapat diketahui bahwa pembentukan peraturan daerah ini tidak hanya untuk melakukan pencegahan atau pemberantasan maksiat tetapi juga terdapat tujuan-tujuan lainnya mulai dari penerapan: “Adat Basandi Syarak, Syarak Basandi Kitabullah,” hingga meningkatkan peran serta masyarakat dalam melakukan pencegahan. Selanjutnya pada Pasal 4 Peraturan Daerah Sumatera Barat No. 11 Tahun 2001 tentang Pencegahan dan Pemberantasan Maksiat, menjelaskan bahwa “Pengaturan pencegahan dan pemberantasan serta segala bentuk perbuatan maksiat lainnya diatur lebih lanjut dalam Peraturan Daerah Kabupaten/Kota.” Dalam hal ini, di Kota Pariaman telah membentuk Peraturan Daerah Kota Pariaman No. 10 Tahun 2018 tentang Ketentraman dan Ketertiban Umum yang menjelaskan secara langsung adanya istilah LGBT tersebut, yaitu pada Pasal 24 dan Pasal 25. Pada Pasal 24 Peraturan Daerah Kota Pariaman No. 10 Tahun 2018 tentang Ketentraman dan Ketertiban Umum mengatur

bahwa, “Setiap orang dilarang berlaku sebagai waria yang melakukan kegiatan mengganggu ketentraman dan ketertiban umum.”

Apabila dilihat dari aspek norma sosial dan budaya, tentunya bagi masyarakat di Sumatera Barat yang mayoritas memeluk agama islam sangat menentang LGBT yang telah jelas melanggar ajaran agama. Dikarenakan pandangan tersebut, adanya LGBT ini tentunya mendapatkan diskriminasi di tengah masyarakat yang pada akhirnya menciptakan lingkungan yang mulai tidak tentram.

2.2. Upaya Pemerintah Sumatera Barat dalam mengatasi Kasus LGBT yang marak terjadi di Sumatera Barat

Dalam menanggapi kasus LGBT pemerintah tentunya telah mengambil beberapa tindakan yang sekiranya mampu dalam mengatasi dan mencegah perilaku LGBT dalam lingkungan masyarakat, yaitu dengan: menambahkan jumlah tenaga kontrak Satpol PP untuk membantu operasi rutin pemberantasan maksiat, membentuk komisi penanggulangan AIDS, meningkatkan program keagamaan dan program penguatan keluarga melalui program 1821, melakukan sosialisasi tentang pergaulan bebas kepada masyarakat.

Pemerintah Provinsi Sumatera Barat telah melaksanakan berbagai langkah pencegahan terkait perilaku lesbian, gay, biseksual, dan transgender (LGBT). Adapun upaya yang sudah dilakukan oleh pemerintah Sumatera adalah:

1. Menegakkan Perda terkait LGBT dalam upaya pencegahan LGBT

Pemerintah Sumatera Barat telah menegakkan Perda yang akan menjadi dasar hukum dalam upaya pencegahan dan pemberantasan perilaku LGBT. Wakil Gubernur Sumatera Barat, Drs. H. Nasrul Abit, menyampaikan bahwa perda ini nantinya akan diterapkan hingga tingkat nagari melalui peraturan nagari untuk mencegah perilaku LGBT.

2. Membuat Peraturan Nagari

MUI Sumatera Barat berkeyakinan bahwa peraturan nagari bisa melindungi masyarakat dari berbagai praktik perilaku menyimpang, termasuk LGBT. Ketua MUI Sumatera Barat, Gusrizal Gazahar, menyatakan bahwa

peraturan nagari memiliki "antibodi" yang kuat di tingkat akar rumput dan bisa membantu mencegah perilaku LGBT.⁷

3. Mempersiapkan Regulasi Gubernur

Pemerintah Sumatera Barat sedang mempersiapkan regulasi gubernur atau peraturan daerah terkait pencegahan dan penanggulangan perilaku penyimpangan seksual. Kepala Biro Kesra Setdaprov Sumbar, Al Amin, menyatakan bahwa regulasi ini sangat penting untuk menangani meningkatnya praktik penyimpangan di kalangan remaja.⁸

4. Mengadakan Pendidikan Seksual

Pemerintah Kota Pariaman telah menerapkan kebijakan untuk menanggulangi perilaku LGBT melalui pendidikan seksual yang tepat serta memberikan pengajaran yang positif kepada anak-anak. Tujuan dari kebijakan ini adalah untuk mencegah perilaku LGBT dengan memperkenalkan pendidikan seksual sejak dini di dalam lingkungan keluarga.

5. Meningkatkan Kesadaran Orang Tua

Ketua DPRD Sumbar mengimbau masyarakat, terutama para orang tua, untuk waspada terhadap perilaku LGBT dan mengambil langkah-langkah pencegahan dengan memberikan pendidikan seksual yang tepat kepada anak-anak. Ia menekankan bahwa orang tua harus menyadari bahwa LGBT juga mempengaruhi kalangan terpelajar dan mahasiswa, sehingga diperlukan upaya pencegahan.

Walaupun berbagai upaya telah dilakukan oleh pemerintah dalam menanggulangi keberadaan LGBT, pemerintah tetap memerlukan kerjasama antar berbagai pihak baik itu individu, komunitas maupun organisasi sosial.⁹ Oleh karena itu, kerjasama dan koordinasi antar pemerintah, masyarakat dan berbagai pihak lain sangatlah dibutuhkan dalam upaya menciptakan tercapainya keberhasilan memberantas

⁷ Muhammad Zulfikar, "MUI Sumbar Yakin Aturan Nagari Bisa Cegah LGBT dan Perilaku Menyimpang" (<https://sumbar.antaranews.com/berita/564282/mui-sumbar-yakin-aturan-nagari-bisa-cegah-lgbt-dan-perilaku-menyimpang>), diakses pada 23 Juni 2024)

⁸ Atviarni, "Menanti Tuah Perda Pencegahan Penyimpangan Seksual" (<https://harianhaluan.id/utama/hh-66211/menanti-tuah-perda-pencegahan-penyimpangan-seksual/>), diakses pada 23 Juni 2024)

⁹ Puja Amanda Zulkira, "Fenomena Perkembangan Lesbian, Gay, Biseksual Dan Transgender Di Kota Padang Dalam Persepektif Hak Asasi Manusia" (Padang: Fakultas Hukum Universitas Andalas, 2021), hlm 61.

LGBT terkhusus di Sumatera Barat. Dengan berbagai upaya yang telah dilakukan pemerintah tentunya peran aktif masyarakat sangatlah diperlukan. Adanya LGBT di dalam lingkungan masyarakat merupakan suatu hal yang sangat mengganggu dikarenakan adanya pandangan masyarakat yang menganggap keberadaan LGBT ini sebagai suatu perilaku menyimpang baik dari segi agama maupun adat istiadat.

3. Penutup

3.1. Kesimpulan

- 1) Aturan hukum terkait permasalahan LGBT dan norma hukum yang ada di tengah masyarakat kota Padang yaitu terdapat pada (1) Sila pertama yang berbunyi “Ketuhanan Yang Maha Esa”. Hal ini didasarkan karena manusia yang merupakan ciptaan tuhan yang telah diciptakan sebaik-baik rupa, dengan identitas yang jelas antara pria dan wanita, dan diciptakan berpasang-pasangan sejak awal mula manusia itu diciptakan; (2) Pasal 1 Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan; (3) Pasal 29 ayat 1 UUD 1945; (4) Pasal 292-293 KUHP; (5) Fatwa MUI Nomor 57 Tahun 2014 tentang Lesbian, Gay, Sodomi dan Pencabulan; (6) Pasal 1 huruf e, Pasal 2, dan Pasal 3, Peraturan Daerah Sumatera Barat No. 11 Tahun 2001 tentang Pencegahan dan Pemberantasan Maksiat, dan; (7) Peraturan Daerah Kota Pariaman No. 10 Tahun 2018 tentang Ketentraman dan Ketertiban Umum.
- 2) Dalam menanggapi kasus LGBT Pemerintah Provinsi Sumatera Barat telah melaksanakan berbagai langkah pencegahan terkait perilaku lesbian, gay, biseksual, dan transgender (LGBT). Adapun upaya yang sudah dilakukan oleh pemerintah Sumatera adalah: (1) Menegakkan Perda terkait LGBT; (2) Membuat Peraturan Nagari; (3) Mempersiapkan Regulasi Gubernur; (4) Mengadakan Pendidikan seksual kepada anak-anak; (5) Meningkatkan kesadaran orang tua di masyarakat.

3.2. Saran

Pemerintah harus secara konsisten mematuhi konstitusi dengan tidak mengakui perkawinan sejenis sesuai dengan Undang-Undang Perkawinan. Kebijakan ini merupakan respon tegas pemerintah terhadap diskusi yang sedang berlangsung tentang

keberadaan komunitas Lesbian, gay, Biseksual, dan Transgender (LGBT) di Indonesia yang saat ini sedang menyoroti isu-isu dan mengadvokasi hak-hak mereka. Selain itu, pemerintah perlu meningkatkan perlindungan keluarga melalui program edukasi pranikah dan memperkuat fungsi BP4 (Badan Penasehat, Pembinaan, dan Pelestarian Perkawinan), serta berkolaborasi dengan organisasi keagamaan untuk memberikan pemahaman yang konstruktif mengenai LGBT.

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Kisruh UKT Naik: Sistem Pendidikan Tinggi di Indonesia Dipertanyakan?

Penulis: Cherilla Izzata Putri Lubis

Local Chapter: Universitas Andalas

Kisruh UKT (Uang Kuliah Tunggal) telah menjadi isu yang hangat selama satu bulan terakhir. UKT merupakan sistem pembayaran biaya kuliah yang diterapkan oleh perguruan tinggi di Indonesia. Namun, saat ini telah terjadi kenaikan UKT secara tiba-tiba di berbagai universitas di Indonesia yang banyak menimbulkan pro dan kontra yang cukup signifikan. Isu ini menyentuh berbagai aspek, mulai dari kemampuan ekonomi mahasiswa dan keluarga, upaya peningkatan kualitas pendidikan, penyediaan fasilitas yang lebih baik bagi mahasiswa, hingga manajemen keuangan perguruan tinggi. Menteri Pendidikan, Kebudayaan, Riset, dan Teknologi (Mendikbudristek) menyatakan bahwa setelah bertemu dengan para rektor, Kemendikbudristek telah mengambil keputusan untuk membatalkan kenaikan UKT. Walaupun sudah ada keputusan tersebut, pernyataan ini dapat berubah sewaktu-waktu dan masih ada kemungkinan untuk menaikkan UKT di masa yang akan datang.

Dilansir dari Sokoguru, Dede Yusuf selaku Wakil Ketua Komisi X DPR, menyoroti bahwa kenaikan UKT ini tidak wajar. Ia curiga bahwa terdapat pemotongan subsidi pemerintah kepada Perguruan Tinggi Negeri Badan Hukum (PTN BH), sehingga membuat PTN harus mencari dana pendidikan secara mandiri, terutama melalui UKT. PTN mencari dana tersebut dengan menambah kuota jumlah mahasiswa atau membebankan UKT yang mahal. Ia menilai bahwa kenaikan UKT ini lebih dari 100% dan salah satu penyebabnya berkaitan dengan Peraturan Menteri Pendidikan, Kebudayaan, Riset, dan Teknologi (Permendikbudristek) Nomor 2 Tahun 2024 tentang Standar Satuan Biaya Operasional Pendidikan Tinggi (SSBOPT). Dengan adanya kenaikan UKT ini, maka akan memberikan dampak pada mahasiswa miskin maupun kelas menengah. Karena terdapat ketidaksesuaian antara UKT yang harus dibayarkan dengan kemampuan ekonomi mahasiswa dan keluarganya, terlihat jelas bahwa realitanya tidak sesuai dengan apa yang diatur. Berdasarkan peraturan tersebut, segala biaya pendidikan agar dikelola secara mandiri oleh kampus atau PTN.

Dalam Permendikbudristek Nomor 39 Tahun 2017 tentang Biaya Kuliah Tunggal pada Perguruan Tinggi Negeri di lingkungan Kementerian Riset, Teknologi, dan Pendidikan Tinggi, Pasal 1 angka 5 menyatakan bahwa biaya yang ditanggung setiap mahasiswa berdasarkan

kemampuan ekonominya. Besaran UKT ditetapkan berdasarkan biaya kuliah tunggal dikurangi biaya yang ditanggung pemerintah. Besaran UKT yang diperoleh juga dibagi atas beberapa kelompok berdasarkan kemampuan ekonomi dari mahasiswa, orang tua mahasiswa, dan pihak lain yang membiayainya.

Akan tetapi dengan adanya kenaikan UKT berdasarkan Permendikburistek Nomor 2 Tahun 2024 tersebut, akan memberikan dampak pada mahasiswa miskin maupun kelas menengah. Mahasiswa banyak yang putus kuliah hingga terjatuh pinjaman online (pinjol) demi membayar UKT yang setinggi langit. Hal tersebut menyebabkan sistem pendidikan tinggi di Indonesia dipertanyakan, bagaimana Indonesia dapat mewujudkan cita-cita Generasi Emas di tahun 2045 jika masih terdapat liberalisasi pendidikan yang dilakukan oleh pemerintah sendiri?

Jumlah masyarakat miskin di Indonesia masih sangat tinggi. Untuk dapat makan sekali sehari saja mereka sudah bersyukur, lantas bagaimana mereka bisa membayangkan suatu saat mereka dapat menyekolahkan anak-anaknya ke perguruan tinggi? Padahal dalam UU Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional menegaskan bahwa setiap warga negara memiliki hak yang sama atas pendidikan baik itu dari golongan orang kaya maupun yang miskin. Tetapi, hal tersebut masih menjadi angan-angan belaka karena faktanya masih banyak kendala yang dihadapi oleh bangsa ini untuk mencerdaskan anak bangsanya.

Mimpi untuk mendapatkan pendidikan gratis belum terwujud hingga saat ini, pendidikan yang seharusnya dapat menjadi sarana untuk meningkatkan kualitas hidup masyarakat serta menjadi kesempatan bagi seluruh warga negara sebagaimana yang tertuang pada Undang-Undang Dasar 1945 Pasal 31 ayat 1. Jika kenaikan UKT dilakukan secara tiba-tiba, hal itu lalu bisa menghambat akses pendidikan dan kesenjangan sosial semakin banyak, serta nantinya sistem pendidikan tinggi di Indonesia semakin dipertanyakan karena tidak terjamin dan meratanya pendidikan bagi generasi penerus bangsa.

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Legal English Dictionary: Criminal Law

by ALSA Local Chapter Universitas Padjadjaran

(Writers: Sheza V. & Natalie S.)

Introduction

ALSA Legal English Dictionary is made as an introduction for anyone, whoever you are, wherever you are, to enter the world of legal English. This book consists of a legal English dictionary legal materials, and various beginner-friendly law-related English exercises. This is the first edition of our two parts Legal English Dictionary with the theme “Criminal Law”. The ALSA Legal English Dictionary: Criminal Law is an indispensable resource designed for students who seek to master the language of criminal law. By holding firm the 4 pillars of ALSA, the ALSA Legal English Dictionary is the all-rounded implementation of it. This dictionary provides precise definitions and contextual explanations, ensuring users can navigate the complex legal landscape with confidence and a global perspective. By combining detailed legal definitions with an international outlook and a focus on vocabulary enhancement, the ALSA Legal English Dictionary: Criminal Law ensures that its users are both legally skilled and globally aware. This comprehensive resource is an invaluable tool for anyone seeking to excel in the field of criminal law, providing the linguistic tools necessary for success in today's interconnected legal landscape.



Legal english dictionary	The word The word in bahasa Indonesia Definition Example of sentence using the word
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A

Abuse

Pelecehan

General term for physical or mental mistreatment.

*Zaid will not **abuse** his say.*

Acquittal

Pembebasan

A finding that the defendant is not guilty of the charges brought by the government. This finding may be reached by the trial judge in a case tried before a judge alone or by the jury in a case tried before a jury.

*That'll guarantee a hung jury plus a push for an **acquittal**.*

Affidavit

Surat pernyataan

A sworn written statement.

*The individual has provided a written **affidavit** to a lawyer confirming this.*

B

Bail

Jaminan

Bail is a sum of money set by a court to ensure that a defendant returns for their trial after being released from custody.

*His parents refused to **bail** him out.*

Bribery

Penyuapan

The corrupt payment, receipt, or solicitation of a private favor for official action nonfinancial conditions designed to ensure their appearance in court when required.

The organization was rife with **bribery and corruption**.

Base offense level

Tingkat pelanggaran dasar

The raw number or point score assigned by the sentencing guidelines to each offense. The base offense level may be modified if specific offense characteristics exist.

The judge determined the sentence by considering the **base offense level**, which was calculated according to the federal sentencing guidelines

C

Criminal Docket

Berkas criminal

The total number of criminal cases in a district court at any given time.

The **criminal docket** for next week includes several high-profile cases involving drug trafficking and assault charges.

Criminal Record

Catatan criminal

A copy of the defendant's prior criminal record, if any, must be given by the government to the defense upon request during discovery.

Having a **criminal record** can impact job prospects and travel opportunities, making it crucial to seek legal advice on potential expungement or mitigation options.

Cross-examination

Pemeriksaan silang



The formal questioning of a witness called by the other party in a trial to challenge the testimony the witness has already given.

During **cross-examination**, the defense attorney skillfully questioned the witness to challenge the credibility of their testimony.

D

Direct examination

Pemeriksaan langsung

The initial questioning of a witness by the attorney who called that witness to the stand.

During the **direct examination**, the prosecutor elicited testimony from the witness to establish the facts of the case and support the charges against the defendant.

Dismissal

Pemberhentian

Court's decision to terminate a court case without imposing liability on the defendant.

The judge granted the motion for **dismissal** due to lack of sufficient evidence presented by the prosecution.

Domestic Violence

Kekerasan dalam rumah tangga

Violence between members of a household, usually spouses; an assault.

Domestic violence cases often require sensitive handling by law enforcement and legal professionals to ensure the safety of victims and appropriate legal consequences for perpetrators.

E

Entry of Judgement

Penetapan putusan

After a defendant is sentenced, the clerk enters the judgment of conviction on the docket sheet.

The **entry of judgment** marked the conclusion of the lengthy legal battle, bringing closure to the contentious dispute between the parties involved.



Evidentiary Hearing

Pemeriksaan bukti

A hearing held in open court before a judge or magistrate judge at which the testimony of witnesses is taken and exhibits may be introduced into evidence.

The judge scheduled an **evidentiary hearing** to review the admissibility of new forensic evidence in the murder trial.

Exhibit

Barang bukti atau dokumen yang diajukan ke pengadilan dalam suatu persidangan untuk mendukung klaim atau pembelaan dari salah satu pihak yang terlibat dalam kasus hukum tersebut.

A piece of physical evidence which is marked for identification and/or introduced into evidence.

The defense attorney presented a key **exhibit** a surveillance video to demonstrate the defendant's whereabouts at the time of the incident.

F

Federal crime

Kejahatan federal

A violation of a criminal law passed by Congress. Federal crimes are investigated by federal law enforcement agencies and prosecuted by the U.S. Attorney for the judicial district in which the crimes occurred.

Conviction of a **federal crime** can result in severe penalties, including lengthy prison sentences and significant fines.

Felony

Tindak pidana berat

An offense punishable by death or confinement in the penitentiary.

Committing a **felony** can lead to serious consequences, including lengthy imprisonment.



Fine

Denda uang yang diberikan sebagai hukuman atas pelanggaran hukum.

A penalty that requires the convicted person to pay to the public treasure a sum of money fixed by law after an offense has been committed.

The violation incurred a **fine** of \$500 by the court

Fraud

Kecurangan dengan maksud untuk mendapatkan keuntungan pribadi

Knowingly misrepresenting a material fact to induce another to detrimentally act upon it in the manner reasonably contemplated.

The defendant is accused of committing **fraud** by creating false documents to misappropriate funds from the company.

G

Gratuitous

Serampangan

Without valuable or legal consideration.

The judge dismissed the claim of police misconduct, ruling that the allegations were **gratuitous** and lacked substantial evidence to support them.

General Verdict

Putusan umum

A verdict requiring no special form.

In a criminal trial, the jury delivered a **general verdict** of guilty after carefully considering all the evidence presented by both the prosecution and the defense.

Grand Jury

Juri utama

Implaneled group of men and women convened to determine whether probable cause exists to return an indictment.

The **grand jury** reviewed the evidence presented by the prosecutor to determine whether there was enough justification to proceed with a trial for the alleged crime.

H

Hearing

Proses Persidangan

A legal proceeding before the court in which testimony is presented.

The defendant requested a preliminary **hearing** to challenge the evidence presented by the prosecution before the trial commenced.

Hearsay

Keterangan saksi yang didengar dari orang lain

Hearsay is an out-of-court statement made by someone other than the testifying witness, offered as evidence to prove the truth of the matter asserted.

The judge ruled the witness's testimony inadmissible because it was based on **hearsay** and did not meet the criteria for firsthand knowledge required in criminal proceedings.

Homicide

Pembunuhan

The killing of one human being by another.

The prosecutor charged the suspect with **homicide** following a thorough investigation into the circumstances surrounding the victim's untimely death.

I

Immunity

Kekebalan merujuk pada perlindungan hukum yang diberikan kepada individu atau kelompok tertentu yang membebaskan mereka dari tanggung jawab hukum

Exemption from liability.

The prosecutor granted **immunity** to the key witness in exchange for their testimony, ensuring they could not be prosecuted for any crimes related to the case they were helping to investigate.



Incarceration

Pemenjaraan

Confinement to a jail or prison.

The judge sentenced the defendant to five years of **incarceration** for the aggravated assault, emphasizing the severity of the crime and the need for rehabilitation.

Injunction

Perintah pengadilan

An order issued by a court that requires someone to do or not to do something.

The district attorney sought an **injunction** to prevent the defendant from contacting the victim while awaiting trial for stalking charges, citing concerns for the victim's safety and the potential for witness tampering.

J

Judgment

Putusan

A final decision or order from which an appeal may be taken; the final determination of an action.

After carefully considering all the evidence presented during the trial, the judge delivered a **judgment** of guilty, sentencing the defendant to ten years in prison for the robbery and assault charges.

Judicial Notice

Pemberitahuan pengadilan

A court accepting into evidence, without requiring proof, an adjudicative fact not subject to reasonable dispute.

The judge took **judicial notice** of the fact that daylight saving time had ended on the night of the crime, thereby influencing the timeline presented by both the prosecution and the defense in the criminal trial.

Jurisdiction

Jurisdiksi

The power of the court to hear and decide a particular matter.

The federal court asserted **jurisdiction** over the case involving interstate drug trafficking, citing the involvement of multiple states and the need for unified prosecution under federal law.

K

Kidnapping

Penculikan

To seize forcibly with intent to confine or imprison.

The defendant was convicted of **kidnapping** after forcibly abducting the victim from their home and demanding a ransom for their safe return.

Kill

Bunuh

To terminate a life.

The prosecution presented evidence showing the defendant's intent to **kill** the victim during the armed robbery, leading to charges of first-degree murder.

Knowingly

Dengan sengaja

Acting with awareness or intention, typically used to describe a state of mind in criminal offenses where intent or awareness of illegal actions is a crucial element.

The suspect **knowingly** entered the restricted area despite multiple warning signs, resulting in charges of trespassing on federal property.

L

Lawsuit

Gugatan

A case or controversy brought before a court.



In criminal law, the victim of the assault filed a civil **lawsuit** against the perpetrator seeking damages for medical expenses and emotional distress caused by the incident.

Libel

Pencemaran nama baik

In criminal law, the victim of the assault filed a civil lawsuit against the perpetrator seeking damages for medical expenses and emotional distress caused by the incident. The journalist faced charges of **libel** after publishing false and defamatory statements about the public figure, prompting a legal battle over freedom of speech and defamation laws.

Litigation

Litigasi

The lawsuit process

The ongoing **litigation** surrounding the financial fraud case involved extensive legal proceedings, including hearings, motions, and witness testimonies, to determine the defendants' culpability and potential.

M

Misdemeanor

Pelanggaran

A less serious criminal offense than a felony, typically punishable by fines, community service, or imprisonment for a year or less.

John was charged with a **misdemeanor** after he was caught shoplifting from the local convenience store.

Murder

Pembunuhan

The unlawful killing of another person with malice aforethought, which can be classified into various degrees depending on the circumstances and intent of the perpetrator.

Detectives gathered evidence linking the suspect to the **murder** of the victim, leading to their arrest and subsequent trial.



Motion

Permohonan atau usulan tertulis

A formal request made to a court for a specific ruling or order, such as a motion to suppress evidence or a motion for dismissal of charges.

The defense attorney filed a **motion** to suppress the evidence, arguing that it was obtained unlawfully.

N

Negligence

Kelalaian

Failure to exercise the level of care that a reasonable person would in similar.

The driver's **negligence** in failing to obey traffic laws led to a fatal accident, resulting in charges of vehicular manslaughter.

Not Guilty

Tidak bersalah

The driver's negligence in failing to obey traffic laws led to a fatal accident, resulting in charges of vehicular manslaughter.

After a lengthy trial, the jury found the defendant **not guilty** of all charges.

Notice of Alibi

Pemberitahuan yang diajukan oleh terdakwa kepada jaksa penuntut umum untuk menggunakan alibi sebagai pembelaan dalam kasus pidana.

A formal notification provided by the defense to the prosecution indicating that the defendant intends to rely on an alibi defense.

The defense attorney submitted a **notice of alibi** to the prosecution, stating that the defendant was out of town at the time of the crime and had witnesses to corroborate their whereabouts.

O

Obstruction of justice



Penghalangan keadilan

The criminal act of impeding or obstructing law enforcement officers, prosecutors, or other officials in the performance of their official duties, often by withholding evidence, providing false information, or tampering with witnesses.

The suspect was charged with **obstruction of justice** for tampering with evidence that was crucial to the investigation.

Overruling

Membatalkan ; mengesampingkan

The judicial decision to reject or invalidate a previous ruling or objection made during legal proceedings, typically by a higher court or judge.

The judge issued an **overruling** of the defense's objection, allowing the prosecutor to proceed with questioning the witness.

Oath

Sumpah

A solemn declaration or promise to tell the truth, often administered to witnesses before giving testimony in court or to jurors during jury selection.

Before taking the witness stand, the witness was sworn in and took an **oath** to tell the truth, the whole truth, and nothing but the truth.

P

Parole

Pembebasan bersyarat

The supervised release of a prisoner before the completion of their sentence, subject to certain conditions and under the supervision of a parole officer.

After serving ten years of his sentence, the inmate was granted **parole**, allowing him to be released from prison under supervision.

Plea bargain

Perjanjian tuntutan



An agreement between the prosecutor and the defendant where the defendant agrees to plead guilty or no contest to certain charges in exchange for concessions such as reduced charges or a lighter sentence.

The defendant decided to accept the **plea bargain** offered by the prosecution, agreeing to plead guilty to a lesser charge in exchange for a reduced sentence.

Prosecution

Penuntutan

The legal process initiated by the government or state to bring criminal charges against a person accused of committing a crime, including presenting evidence and arguments in court to obtain a conviction.

The **prosecution** presented compelling forensic evidence that linked the defendant to the crime scene.

Q

Qualified immunity

Perlindungan pejabat

Immunity from lawsuits that is granted to public officials for acts that violate someone's civil rights if it can be shown that the acts do not violate clearly established statutory or constitutional rights of which a reasonable person would be aware

Police officers often cite **qualified immunity** as a defense against lawsuits alleging civil rights violations during the course of their duties.

Quash

Penolakan terhadap keputusan hukum

To annul or void a legal proceeding, such as a subpoena, warrant, or indictment, typically on the grounds that it is improper, invalid, or issued without authority.

The defense attorney filed a motion to **quash** the subpoena issued by the prosecution, arguing it was overly broad and not relevant to the case.

Question of fact



Pertanyaan fakta

To annul or void a legal proceeding, such as a subpoena, warrant, or indictment, typically on the grounds that it is improper, invalid, or issued without authority.

In the trial, the jury must determine the **question of fact** regarding whether the defendant was present at the scene of the crime based on the testimony and evidence presented.

R

Restitution

Restitusi

Compensation or reimbursement ordered by the court to be paid by a defendant to a victim for financial losses or damages resulting from the defendant's criminal acts.

As part of the sentencing, the judge ordered the defendant to pay **restitution** to the victims to compensate for the financial losses caused by the crime.

Rehabilitation

Rehabilitasi

The goal of the criminal justice system to reform and reintegrate offenders back into society through education, treatment, and other programs aimed at reducing recidivism.

The correctional facility focuses on **rehabilitation** programs to help inmates acquire job skills and address underlying issues contributing to their criminal behavior.

Reasonable doubt

Keraguan yang wajar

The standard of proof required for a jury or judge to convict a defendant in a criminal trial, requiring that the evidence be so convincing that a reasonable person would not hesitate to rely and act upon it.

The prosecution proved the defendant's guilt beyond a **reasonable doubt**.

S

Search warrant

Surat perintah penggeledahan



A court order issued by a judge authorizing law enforcement officers to search a specific location for evidence of a crime, based on probable cause.

The detectives obtained a **search warrant** from the judge before conducting a thorough search of the suspect's residence for evidence related to the robbery.

Sentencing

Penjatuhan hukuman

The judicial determination of the punishment or penalty imposed on a person convicted of a crime, taking into account factors such as the nature of the offense, the defendant's criminal history, and mitigating or aggravating circumstances.

After the defendant's conviction, the judge scheduled a **sentencing** hearing to determine the appropriate punishment for the crime committed.

Subpoena

Dokumen untuk menghadirkan seseorang di pengadilan

A legal document ordering someone to attend a court.

The prosecutor issued a **subpoena** to compel the witness to testify at the trial and provide crucial information about the events leading to the crime.

T

Testimony

Kesaksian

A formal written or spoken statement given in a court of law.

During the trial, the witness's **testimony** provided key details that helped the jury understand the sequence of events leading up to the crime.

Trial

Persidangan

A formal examination of evidence in court to determine guilt or innocence.

The defendant faced a lengthy **trial**.



Tribunal

Lembaga dengan kewenangan untuk memutuskan perkara

A body established to settle certain types of disputes, often less formal than a court.

The international **tribunal** was established to prosecute war crimes committed during the conflict, ensuring justice for victims and accountability for perpetrators.

U

Unlawful use of weapon

Penggunaan senjata tidak sah

Using a weapon in a manner that is prohibited by law, such as carrying a concealed weapon without a permit.

The suspect was charged with **unlawful use of a weapon** after brandishing a firearm in a public place without a valid permit.

Unsecured bond

Obligasi yang didukung oleh jaminan aset tertentu

A bond set by a court which allows defendant to be released from custody without having to pay money upfront, but they are liable for the amount if they fail to appear in court.

The judge granted the defendant release on an **unsecured bond**, allowing them to await trial outside of jail as long as they complied with specified conditions.

Unlawful search and seizure

Penggeledahan dan penyitaan tidak sah

Conducting a search or taking property without proper legal authority or a warrant.

The defense argued that the evidence should be suppressed due to **unlawful search** and seizure, as the police conducted the raid without valid warrant.

V

Verdict

Putusan

The formal decision or finding of a jury or judge at the conclusion of a criminal trial, determining whether the defendant is guilty or not guilty of the charges.

After deliberating for several hours, the jury reached a unanimous **verdict** of guilty, holding the defendant accountable for the charges of assault and battery.

Victim impact statement

Pernyataan dampak korban

A written or oral statement provided by a crime victim or their family describing the emotional, physical, and financial impact of the crime on their lives, submitted to the court during sentencing.

During the sentencing phase, the victim's family read an emotional **victim impact statement**, detailing the profound impact of the crime on their lives.

Vicarious liability

Tanggung jawab vikarius

Legal responsibility imposed on one person for the actions or omissions of another person, typically applied in employer-employee relationships or when supervising criminal conduct.

The employer faced **vicarious liability** for the actions of their employee, who committed fraud while conducting business on behalf of the company.

W

Warrant

Surat perintah

A legal document issued by a judge or magistrate authorizing law enforcement officers perform specific such to a act, as a search of a property or the arrest of a suspect.

The judge issued a **warrant** for his arrest.

Witness

Saksi

A person who has information or evidence relevant to a criminal case and is called upon to testify in court under oath what know observed.



The **witness** took the stand and provided crucial testimony that helped establish the defendant's whereabouts at the time of the crime.

Withholding evidence

Menahan bukti

The deliberate suppression or concealment of evidence by prosecutors or law enforcement officials that is favorable to the defendant's case, potentially violating the defendant's right to a fair trial.

The prosecutor was accused of **withholding evidence** that could have exonerated the defendant, leading to a mistrial and further investigation into prosecutorial misconduct

Y

Your honor

Yang mulia

The proper way to address a judge in court.

Your Honor, the defense requests a brief recess to confer with client before proceeding with the cross-examination.

Youthful offenders

Pelaku kejahatan anak

Under-age people accused of crimes who are processed through a juvenile court and juvenile detention or prison facilities.

The judge decided to treat the defendants as **youthful offenders** due to their age and lack of prior criminal record, allowing for a more rehabilitative approach to sentencing.

Z

Zero tolerance

Kebijakan tidak memberi toleransi

Refers to strict enforcement of laws or policies without exemptions or allowances for mitigating circumstances, often applied in areas such as drug offenses or school discipline policies.



The school district implemented a **zero tolerance** policy against drug possession, resulting in immediate suspension and legal consequences for any student found violating the policy.

Zoning

Zonasi

A system of developing a city or county plan in which various geographic areas (zones) are restricted to certain uses and development.

The defense argued that the city's **zoning** laws were unfairly applied, leading to a legal challenge over the construction of the new courthouse.

Zoning Violation

Pelanggaran zonasi

Although primarily associated with land use regulations, zoning violations can sometimes have legal implications that intersect with criminal law, especially in cases involving non-compliance with zoning laws that impact public safety or environmental regulations.

The property owner was fined for a **zoning violation** after converting their residence into a commercial business without obtaining the required permits.

Harmony and Healing : Restorative Justice in Indonesia

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Local Chapter: Universitas Diponegoro

A. Defining Restorative Justice: Principles, Goals, and Differences from Traditional Justice

Restorative justice represents a component of the criminal justice system that prioritizes the restoration of the victim and the reestablishment of equilibrium between the criminal act and its impact on society. Restorative justice is an implementation of the speedy trial principle, which emphasizes aspects of effectiveness, efficiency, and affordability, as well as affordable costs.¹ Restorative justice represents a critique of the conventional criminal justice process, which tends to prioritize the "punishment" aspect as the primary objective within the criminal justice system.² This approach tends to marginalize the perpetrators and victims of criminal acts, who are integral participants in the criminal justice process. The conventional criminal justice process emphasizes the law as a text and process, whereas restorative justice challenges this perspective.³

The fundamental premise of restorative justice is the restoration of victims who have endured harm as a result of criminal activity.⁴ This is achieved through a variety of measures, including the provision of compensation, the facilitation of peace, the involvement of perpetrators in social work initiatives, and the establishment of other agreements.⁵ In nature, the just in the restorative justice framework is not one-sided,

¹ Wati, E. E., Nurrozalina, R., & Wibowo, A. T. 2021. Penerapan Asas Peradilan Cepat, Sederhana Dan Biaya Ringan Dalam Pemeriksaan Perkara Dispensasi Nikah. *Economics, Social, and Humanities Journal (Esochum)*, 1(1), p. 18.

² H. Christianto. 2020. *Norma Persatuan Sebagai Batasan Perbuatan Pidana Penyebaran Ujaran Kebencian Melalui Internet*. *Veritas et Justitia*, Vol. 6, p. 123-124.

³ A. M. D. Mappatunru, 2020. The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum Indonesia. *Indones. J. Crim. Law*. Vol. 2. p. 136-139.

⁴ Director General of The Public Justice of Indonesia, Reg. 1691/DJU/SK/PS.00/12/2020

⁵ Ibid

impartial, arbitrary, or partial. It adheres to the applicable laws and regulations and considers the equality of compensation rights and balance in every aspect of life. The perpetrator is afforded the opportunity to participate in the restoration of the situation, the community is tasked with the preservation of peace, and the court is charged with the maintenance of public order.

The objective of restorative justice in the context of criminal law is to facilitate the empowerment of victims, perpetrators, families, and communities to repair the consequences of an offense. This is achieved by utilizing awareness and conviction as the foundation for improving social (the concept of justice is a multifaceted approach that encompasses the perspectives of various stakeholders.⁶ By viewing justice from multiple angles, we can improve social life by addressing the needs of victims, perpetrators, and society as a whole)

B. Restorative Justice in Indonesia

The implementation of restorative justice (RJ) in Indonesia can be observed through the mapping of regulations within the existing criminal justice system.⁷ These regulations can facilitate the application of RJ in alignment with its defining principles. In the context of current laws and regulations, circulars, decrees, and agreements between law enforcement in Indonesia, numerous rules utilize RJ terminology, often employing the term "restorative justice", including:

1. Law No. 11/2012 on the Juvenile Justice System, enacted on July 30, 2012
2. Memorandum of Understanding between the Chief Justice of the Supreme Court, the Minister of Law and Human Rights, the Attorney General, and the Chief of Police on the

⁶ R Folger. 1996. Social Justice Research. *Social Justice Research* Volume 9 Issue 4 pages: 410

⁷ Indonesia Judicial Research Society. 2023. Opportunities and Challenges Implementation of Restorative Justice in the Criminal Justice System in Indonesia.

Implementation of the Adjustment of the Limits of Minor Crimes and the Amount of Fines, Rapid Examination Procedures, and the Application of Restorative Justice, approved on October 17, 2012.

3. Chief of Police Circular Letter No. SE/8/2018 on the Application of Restorative Justice in Criminal Case Resolution, passed on July 27, 2018.
4. Chief of Police Regulation No. 6 of 2019 on the Investigation of Criminal Offenses.
5. Attorney General Regulation No. 15 of 2020 on Discontinuation of Prosecution based on Restorative Justice.
6. Director General of The Public Justice of Indonesia, Reg. 1691/DJU/SK/PS.00/12/2020 on the Implementation of Guidelines for the Application of Restorative Justice, passed on December 22, 2020.
7. Prosecutor's Guideline No. 18 of 2021 concerning the Settlement of Case Handling of Criminal Acts of Narcotics Abuse through Rehabilitation with a Restorative Justice Approach as an Implementation of the Dominus Litis Principle of Prosecutors.
8. Regulation of the Indonesian National Police No. 8 of 2021 on Handling Crimes Based on Restorative Justice, passed on August 19, 2021.

These rules are still centered on a "case resolution" orientation, with the process being of secondary importance and the end goal being the primary focus. This implies that RJ is still limited in its orientation as a "goal or outcome" rather than a combination of "process and goal", which is what gives rise to the special note, such as the scope of application of RJ in these regulations also varies, for example in the scope of the police, and the courts,

RJ can be applied to narcotics offenses, while in the scope of the prosecutor's office it is not (only introduced later with the Prosecutor's Guidelines No. 18/2021). At the court level, RJ can only be applied to minor offenses (petty theft, petty embezzlement, petty fraud, in the Criminal Code), while the police and prosecutor's office also set different limits on criminal offenses.

C. Successful Restorative Justice in Indonesia

The practice of dispute resolution through the involvement of affected parties and the broader community, or what is known as justice restoration, has a long history in the Indonesian justice system. Indeed, the handling of disputes outside the formal justice process has been a common practice for much longer than the formation of the Indonesian state. This is due to the fact that the majority of Indonesia's population is neither urban nor secular, and thus the social values that are prioritized tend to emphasize personal relationships with characteristics of tolerance, communal solidarity, and avoidance of disputes.⁸

One of the successful restorative justice attempts in Indonesia is the Timber theft case in Badur, Sumenep. In March 2021, Atrawi ordered people to cut down the Chinese Albizia tree, commonly known as the sengon, located on the property of Jamik. Following the tree's felling, the wood was transported to Atrawi's residence for use in renovating his kitchen. Consequently, Jamik sustained a financial loss of approximately 3.5 million Rupiahs. After an extended period of time, the case was ultimately submitted for resolution through restorative justice by the East Java Prosecutor's Office and approved by the Deputy Attorney General for General Crimes of the Indonesian Attorney General's Office and has been returned to his family.⁹

⁸ Op. cit.

⁹ Netra News. 2024. District Attorney Sumenep Settles Two Cases Through Restorative Justice. <https://www.netranews.co.id/2024/03/02/kajari-sumenep-selesaikan-perkara-dua-orang-melalui-restorative-justice>. Accessed on 3 August, 2024 (23.45).

The practice of forgiveness is exemplified by the tenets of restorative justice, which strives to facilitate a recovery process or achieve outcomes that restore the original state. Jamik, who is still related to Atrawi, was reluctant to allow the relationship within their family to become clouded by a seemingly inconsequential issue, namely the theft of a small wooden object. Consequently, discussions were conducted between the victim, the perpetrator, and the relevant authorities with the objective of identifying a mutually acceptable solution, namely restorative justice.

Such incidents occur with regularity throughout Indonesia. Given the country's cultural proclivity towards forgiveness, it is imperative that greater attention be paid to the resolution of legal disputes through the lens of restorative justice.

Summary

Restorative justice (RJ) represents an alternative approach to the criminal justice system that prioritizes the healing of victims and the restoration of social stability disrupted by criminal acts. In contrast to traditional justice, which places an emphasis on retribution, restorative justice aims to repair relationships and provide compensation through inclusive processes that engage victims, perpetrators, and the broader community. This method is distinguished by its dedication to efficacy, economy, accessibility, and the impartial administration of justice, with the objective of empowering all parties to address the ramifications of criminal acts. In Indonesia, restorative justice is gaining recognition and integration into the legal system through the enactment of various regulations. Notable legal instruments include Law No. 11/2012 on the Juvenile Justice System, several circulars and regulations from the Chief of Police, and guidelines from the Attorney General's Office. These legal instruments underscore the goal-oriented nature of RJ, yet the practical implementation continues to prioritize case resolution over a comprehensive integration of process and outcome. An illustration of restorative justice in Indonesia is the resolution of Sumenep's timber theft case in 2021. Atrawi, who engaged in the illicit felling of trees on Jamik's property, was responsible for a financial loss of 3.5 million rupiahs. The case was resolved through restorative justice, facilitated by the East Java Prosecutor's Office, which resulted in a reconciliation between the parties. This illustrates the efficacy of RJ in facilitating forgiveness and preserving familial harmony, reflecting Indonesia's cultural tendency towards resolution through mutual understanding and restoration.

GLOSSARY TABLE

1.	Restorative Justice	<i>Keadilan Restoratif</i>	Method of dealing with convicted criminals in which they are urged to accept responsibility for their offences through meeting victims, making amends to victims or the community, etc	At present the provision of restorative justice is patchy.	Collin's Dictionary of Law
2.	Victim	<i>Korban</i>	Person harmed by criminal acts, attack target.	The victim had received repeated blows to the head and body.	Black's Law Dictionary
3.	Perpetrator	<i>Pelaku</i>	Person who committed a crime.	Police are questioning the alleged perpetrator of the abuse.	Cornell Law School's Legal Dictionary
4.	Dispute	<i>Perselisihan</i>	A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other.	There is some dispute about the cause.	Black's Law Dictionary
5.	Enactment	<i>Pemberlakuan</i>	The act of passing an rule or statute by a legislature.	The enactment of the law brought immediate results.	Black's Law Dictionary
6.	Legal Instrument	<i>Instrumen Hukum</i>	A written document; a formal or legal document in writing,	When signing the Project Agreement,	Black's Law Dictionary

			such as a contract, deed, will, bond, or lease.	the Project Leaders, as well as their respective organizations, shall abide by all terms and conditions of this Master Legal Instrument.	
7.	Theft	<i>Pencuri</i>	A criminal taking of the property or services of another without consent	She was accused of car theft.	Merriam-Webster 's Legal Dictionary
8.	Illicit	<i>Terlarang</i>	Not permitted or allowed; prohibited ; unlawful; as an illicit trade; illicit Intercourse.	He was arrested for selling illicit copies of the software.	Black's Law Dictionary
9.	Reconciliation	<i>Rekonsiliasi</i>	The renewal of amicable relations between two persons who had been at enmity or variance; usually implying forgiveness of injuries on one or both sides. It is sometimes used in the law	The colonel was seeking a reconciliation with his wife.	Black's Law Dictionary
10.	Efficacy	<i>Efikasi</i>	Effectiveness. Likelihood of achieving desired end by expending effort.	The efficacy of this drug has yet to be tested	Black's Law Dictionary

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Copyright Demystified: A Thorough Exploration of Rights And Regulations in Indonesia

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A. Legal Introduction to Copyright

Copyright at its core, is a legal right granted to the creators of original works. The right to be protected morally and materially resulting from any scientific, literary, or artistic productions in which the person is its own creator (author) is established in Article 27 under the United Nations Universal Declaration of Human Rights.¹ Through these rights, copyright grants the creator (a person behind a work) exclusive rights to control how their work is used. The primary purpose behind copyright law is to foster the creation and dissemination of works for the benefit of the public. By granting authors the exclusive right to authorize certain uses of their works, copyright provides economic incentives to create new works and to make them available in the marketplace.² This includes the right to reproduce the work, distribute copies, create derivative works (such as adaptations), publicly perform or display the work, and translate it. For example, the copyright protects a song through its melody, lyrics, and even its sheet music.

Creators also have the right to be recognized or opt to not be recognized for their works. To be recognized means the creator's name must be included or acknowledged in any use or distribution of the work. This recognition gives creators proper credit and a powerful incentive for innovation and creativity, as creators can reap the rewards of their efforts without fear of unauthorized use.³ In some cases, the creator may not want

¹ Universal Declaration of Human Rights.

² United States Patent and Trademark Office. "Copyright basics." *USPTO*, <https://www.uspto.gov/ip-policy/copyright-policy/copyright-basics/> Accessed 4 July, 2024 (21.30).

³ LawBite. 2023. What is copyright and why is it important?.

to be associated with a particular work. They have the right not to include their name and hence choose not to be recognized for their work.

Nevertheless, copyright only protects the tangible form of creations, meaning that ideas, procedural methods, concepts, or anything that is intangible or has not been expressed in any form of creation, are not subject to copyright. The United States legal doctrine regarding copyright recognizes this as the idea-expression dichotomy, whereas the distinction between "idea" and "expression" is fundamental to copyright law.⁴

The legal framework surrounding copyright varies by country, but some key principles are often shared. Most jurisdictions recognize automatic protection. As soon as a work is created and fixed in a tangible form (written down, recorded, etc.), copyright protection arises. Strong copyright protections ensure many purposes and benefits. For starters, it helps the economy by protecting industries that rely on intellectual property. It ensures industries thrive, drives economic growth, creates jobs, and promotes cultural and technological advancements.

B. Navigating Indonesia's Copyright Landscape

Indonesia, a nation brimming with artistic expression, has a well-defined copyright framework laid out in Law Number 28 of 2014. Not only the Copyright Law but copyright arrangements are also regulated more deeply and explicitly in various regulations such as Government Regulation Number 16 of 2020 concerning Recording of Creation and Related Rights Products and Ministerial Regulation Number 20 of 2021 concerning Management of Royalties for Copyright of Songs and/ or Music. It serves important purposes such as ensuring that creators and rights holders receive fair remuneration for the use of their works, ensuring their rights are

<https://www.lawbite.co.uk/resources/blog/what-is-copyright-and-why-is-it-important>.

Accessed 3 July, 2024 (20.30).

⁴ Noor, Natasha. 2021. Copyright Law in Protecting Creators' Exclusive Rights in the Creative Industry: A Comparative Study.

<https://journal.prasetiyamulya.ac.id/journal/index.php/TLJ/article/view/637>. Accessed 4 July, 2024 (22.30).

recognized and respected, and providing legal certainty for all parties involved.

Copyright covers a wide scope of objects, ranging from science, art, and literature to computer programs. These various objects own exclusive rights to be protected morally and economically. Article 4 of Copyright Law states copyright as an exclusive right consisting of moral rights and economic rights. Moral rights refer to rights that are eternally inherent in the creator. A right to protect the creator's work integrity from being damaged if ever their work is misused.⁵ The protection is provided automatically when it has been realized in a tangible form that allows the duplication of the work. It applies indefinitely or during the term of copyright on the creation in question.

Whilst, economic rights are rights of creators or copyright holders to obtain economic benefits of the creation. This allows creators or copyright holders to do actions such as publication, reproduction, distribution, leasing, and many more towards their work as stated in Article 9 of Copyright Law. Any person who exercises the economic rights of the creator must obtain permission from the creator or copyright holder. They also should take into account the validity period of economic rights as it is different for each type of work. Article 58 of Copyright Law states creations that are valid during the life of the creator plus 70 years after the creator dies, whereas Articles 59 and 63 of Copyright Law states creations that are valid for 20 and 50 years.⁶

In this era where everything is technological, copyright infringement is increasingly vulnerable. A commercial use of copyright that harms the creator is considered copyright infringement and may be subject to civil suit

⁵ Wahyuni, Willy. 2022. Artists Need to Understand the Provisions of Moral Rights and Economic Rights in Copyright. <https://www.hukumonline.com/berita/a/pelaku-seni-perlu-pahami-ketentuan-hak-moral-dan-hak-ekonomi-dalam-hak-cipta-lt63ad61c7d182a/?page=1>. Accessed on 3 July, 2024 (22.45).

⁶ Directorate General of Intellectual Property Ministry of Law and Human Rights R.I. 2019. Introduction to Copyright. <https://dgip.go.id/menu-utama/hak-cipta/pengenalan>. Accessed on July 3, 2024 (22.45).

or criminal prosecution, in accordance with Articles 96- 99 and 112- 119 of Copyright Law respectively.⁷ This includes taking action without the authorization of the creator or copyright holder and anything that is contrary to morals, decency, and public order.

C. Copyright Legal Dispute in Indonesia

At its heart, Indonesian copyright law adheres to the principle of automatic protection. Unlike some jurisdictions where registration is necessary, Indonesian law recognizes copyright as soon as a creative work is expressed in a tangible form. This approach simplifies the process for creators, allowing them to benefit from protection without additional bureaucratic hurdles. The law further emphasizes the importance of creators' rights. It defines copyright as the exclusive rights granted to creators of "authorship works" as mentioned in Article 1 of Copyright Law.⁸

One of the cases and legal disputes regarding copyright in Indonesia is the plagiarism dispute of Indonesia TikTok content creator Ricodwichy or known as Rico Dwi Cahyono. He was accused of claiming his artworks as a result of his own thoughts, when in fact he cheated on other people's work. The case gained public attention after a TikTok account named @dopackinginjun aka Jack re-uploaded a video showing Rico recognizing his own work, Timun Mas, and showed dissatisfaction as his work was completely plagiarized. Netizens also found allegations that some of Rico's painting content for endorsement was plagiarizing the work of foreign artists. A long thread on X related to the allegedly plagiarized works appeared, accusing Rico of redrawing without permission, giving credit to the creators nor claiming inspiration from other people's work.⁹

⁷ Binus Business Law. 2017. About the Use of Copyright. Retrieved from <https://business-law.binus.ac.id/konsultasi-hukum/tentang-penggunaan-hak-cipta/>. Accessed on July 3, 2024 (22.57).

⁸ Law of the Republic of Indonesia Number 28 of 2014 on Copyrights.

⁹ IDN Times. 2024. Chronology of TikToker Ricodwichy Accused of Plagiarizing a Painting. <https://www.idntimes.com/hype/viral/elizabeth-chiquita-tuedestin-priwiratu/kronologi-tiktoker-ricodwichy-dituduh-plagiat-lukisan?page=all>. Accessed on 15 July, 2024 (22.45).

This is certainly contrary to all aspects related to copyright. It is written in the Copyright Law in Article 40 paragraph 1 letter F and Article 113 that plagiarism of images is not allowed, let alone used for commercial purposes, as he could be subjected to criminal prosecution. Due to Rico's student status, the campus questioned him further regarding the dispute and gave him sanction of repeating his courses. Rico was also required to attend an off-campus party to resolve the issue. He had deleted most of his uploads on various social media and left an apology video addressed to the aggrieved parties.¹⁰ Plagiarism cases like these highlight the importance of originality and ethics in content creation on social media platforms.

To prevent similar things from happening, the government must take action to prevent such things from happening severely. They must strengthen strict supervision of the creation and dissemination of copyright-infringing content by involving various parties, both domestic and foreign, in handling copyright infringement cases. In addition to that, they must take legal action with sanctions that can provide a deterrent effect and uphold the rights of creators. For example, using Digital Rights Management (DRM) systems and anti-piracy measures that are still utilized by Indonesia to ensure that their work is not distributed freely without their consent. By setting clear rules, copyright laws protect creators and promote a fair digital environment where users can legally and ethically access a wide range of content.¹¹

¹⁰ Purbaya, Angling Adhtiya. 2024. Content Creator Plagiarizes Work, Turns Out to Be an Unnes Student. <https://www.detik.com/jateng/berita/d-7407554/heboh-konten-kreator-plagiat-karya-ternyata-mahasiswa-unnes>. Accessed on 15 July, 2024 (23.00).

¹¹ Copyright Insights. 2023. The Role of Digital Rights Management. <https://copyrightinsights.com/insight/the-role-of-digital-rights-management/>. Accessed on 3 July, 2024 (21.35).

Summary

Copyright is a legal right granted to creators of original works, allowing them exclusive control over how their work is used, such as reproduction, distribution, and creation of derivative works. Copyrights give protection against unauthorized use of original works, revoking rights when necessary. One such example is Indonesia, with its vibrant artistic scene, which has a comprehensive copyright framework outlined in Law Number 28 of 2014, supporting and promoting creativity.

Covering a wide range of objects, each of them has exclusive moral and economic protection with its own validity period of copyright protection. All of these are regulated in the Copyright Law, with additional regulations for royalties and criminal sanctions for infringement. Copyright infringement is a significant concern, leading to criminal prosecution or civil suits for unauthorized use that harms creators. Hence, the government must strengthen supervision and take legal action to prevent and deter copyright infringement, protecting the rights of creators.

Indonesia's Copyright Law grants exclusive rights to creators or recipients, enforcing automatic protection upon expression of creative works in tangible form. It empowers creators to control the use and dissemination of their creations, ensuring recognition and benefits for their exclusive rights for authorship works like reproduction, distribution, derivative works, and translation. With technology advancements and widespread internet use, copyright is essential for creators to maintain the value of their work and earn a living. Furthermore, copyright law benefits the economy by protecting industries reliant on intellectual property, driving economic growth, job creation, and cultural and technological advancements.

GLOSSARY TABLE

No.	Terminology	Translation	Definition	Example	Source
1.	Copyright	<i>Hak Cipta</i>	The exclusive right to reproduce or authorize others to reproduce artistic, dramatic, literary, or musical works.	It is a criminal offense knowingly to make or deal in articles that infringe a copyright.	Oxford Dictionary of Law
2.	Exclusive Rights	<i>Hak Eksklusif</i>	The right or privilege that can only be used by the person who it is granted to.	Giving up control also means relinquishing exclusive rights to information.	Black's Law Dictionary
3.	Intellectual Property	<i>Kekayaan Intelektual</i>	Property (as an idea, method, or written work) that derives from the work of the mind.	Any song that you write is your intellectual property.	Merriam-Webster's Legal Dictionary
4.	Tangible	<i>Berwujud</i>	Something that has form and exists physically and is discernible by one or more senses.	From 1997 to 2019, capital investment in tangibles like machines and buildings fell from 22 to 14% of gross value added in the United States and from 25 to 17% in Europe.	Black's Law Dictionary
5.	Royalty	<i>Royalti</i>	A sum payable for the right to	Royalties are generally paid	Oxford

			use someone else's property for the purpose of gain.	for the licensing of intellectual property.	Dictionary of Law
6.	Sanction	<i>Sanksi</i>	A punitive or coercive measure or action that results from failure to comply with a law, rule, or order.	Their policy has legal sanctions.	Merriam-Webster 's Legal Dictionary
7.	Dissemination	<i>Diseminasi</i>	The act or process of disseminating or spreading something : the state of being disseminated.	In addition, generative artificial intelligence (AI) can affect the dissemination of fake news.	Merriam-Webster 's Legal Dictionary
8.	Legal Action	<i>Tindak Hukum</i>	Lawful pursuit for justice or decision under the law, typically leading to proceeding within the jurisdiction's court system.	He plans on taking legal action against the company.	Black's Law Dictionary
9.	Infringement	<i>Pelanggaran</i>	A breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right.	Freedom of speech is an infringement of the U.S. Constitution.	Black's Law Dictionary
10.	Revoke	<i>Mencabut</i>	To destroy the effectiveness of	The judge revoked her	Merriam-

			(one's will) by executing another or by an act of destruction (as tearing in half).	driver's license.	Webster 's Legal Dictionary
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Deep State: Bypassing Checks and Balances Mechanisms Within a Democratic Country

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Local Chapter: Universitas Diponegoro

A. The Definition of Bypassing Checks and Balances Mechanism Within a Democratic Country

The checks and balances mechanism in Indonesia was established at the same time as changes were made to the state's institutional structure which is no longer subordinate as a result of amendments to the 1945 Constitution. With amendments to the 1945 Constitution from the perspective of separation of power which is linked to Article 24 paragraph (2) of the 1945 Constitution, the institutional system in Indonesia was renewed from a simple distribution of power to a stronger, clearer separation of power. Such reforms were meant to ensure that the many government institutions could work more independently and prevent any one institution or individual from gaining too much power as shown in Indonesia's "new order" period. There are three types of branches of state powers, namely legislative, executive and judiciary which later became known as *Trias Politica*. *Trias Politica* is the assumption that state power consists of three types of power: First, legislative power or law-making power (in new terms often called rule-making function); second, executive power or law-implementing power (rule application function); and the third is judicial power or the power to prosecute violations of the law (rule adjudication function). *Trias Politica* is a normative principle that these power functions must not be handed over to the same person/institution to prevent abuse of power by those who are strong.

Unfortunately, the separation of powers was still not enough to stop the separated bodies of power in Indonesia from colluding with each other for personal, political, or group benefits, and agenda. As such, the existence of a checks and balances mechanism is required in each state institution to monitor and balance the activity of the other state institutions. This is in accordance with the ideals of reformists towards the 1945 Constitution from 1998 till 2002 for the sake of creating an accountable state administration, free from arbitrariness and collusion.¹

The theory of separation of powers and division of powers state and power stems from the idea that in a government if three branches of powers are carried out by one person/state institution, then its power will tend to be absolute, and when a government has absolute power, there is a greater inclination to commit arbitrary acts. This is in accordance with the theory put forward by Lord Acton who states “power tends to corrupt but absolute power corrupts absolutely”. Checks and balances are the mechanisms that distribute power throughout a political system – preventing any one institution or individual from exercising total control. The checks and balances mechanism in the process of forming laws has a positive impact, namely preventing domination and arbitrariness by an institution and negative, namely not finding agreement in negotiations, which has an impact on the formation and termination of law making. process. This research analyzes the implementation of the checks and balances mechanism between the legislative and executive institutions in the formation of laws and whether the checks and balances mechanism is realized between the legislative and executive institutions in the process of forming laws. The words ‘checks’ and ‘balances’ are typically used together, but can be thought of as referring to subtly different (though overlapping) things. Checks are the mechanisms that allow political institutions to limit one another’s power – for example by blocking, delaying, or simply criticizing decisions. Balances, meanwhile, ensure that a wide variety of views and interests are represented in the democratic process. This includes structures like federalism

¹ MPR.go.id, 2017. Checks and Balances Dalam Sistem Ketatanegaraan Indonesia.
https://mpr.go.id/img/jurnal/file/250322_2017%20-%20Checks%20&%20Balances%20dalam%20Sistem%20Ketatanegaraan%20Indonesia.PDF June 8th 2024 (16:43)

or broader features of democratic functioning such as the existence of multiple political parties.²

B. Evaluation and Challenges in Implementing The Checks and Balances Function in a Democratic Country

Without the existence of a checks and balances system within a governmental institution, a small group of people with immense wealth and influence can directly hinder the government's ability to generate policies that are healthy for a democratic country. They usually do this by doing “solids” to the elected heads of government such as giving them money, protection, as well as the political influence which these heads of government themselves need to ensure that they stay on the seat of power for as long as they can. The individuals colluded and created an illegal symbiotic mutualism that hugely benefits themselves. These small groups of people combined are what many in the West called deep states, a government within a government built on the basis of oligarchy (government by those with power, strength, and influence) instead of democracy (government by the general population).³

In Indonesia, the high costs of political campaigns mean government seat candidates need a lot of money in order to run for a democratic seat in the government. If said government candidates do not have the financial background and or influence necessary to run as a candidate, they would usually try to seek out funds and influence from donors with said influence and power to help them run for an elected seat. One case that can be taken is a form of money politics that often occurs, namely giving political dowries to parties. This practice will damage democracy, and produce incompetent and corrupt leaders and representatives of the people. A political dowry is an amount of money given by a person or institution to a political party or coalition of parties in the process of nominating people's

² The Constitution Unit Blog, 2022. Checks and Balances : what are they and why do they matter? 2023. <https://g.co/kgs/DpTdm1n> and constitution@ucl.ac.uk June 8th, 2024 (16:14)

³ Lofgren, Mike. 2016. *The deep state: The fall of the constitution and the rise of a shadow government*. Penguin.

representatives or leaders such as governors, regents, mayors, even president and vice president.

From this understanding, this type of money politics occurs at the nomination stage by the party, the dowry giver can be anyone, both internal and external.⁴ After the candidates have been elected with the help of their donors, the donors would then ask for the return of favor in the form of money and or the making and enforcement of policies that would benefit said donors. This act of elected governmental heads who tried to repay their donors is the reason why an elected government body often makes questionable decisions in solving domestic issues. In other words, the government bodies of Indonesia were often preoccupied with paying back what they owed to their donors through corruption, nepotism, and collusion instead of actually focusing on solving national issues both in the domestic and international scope.⁵

To mitigate such issues, in a democratic country, checks and balances play two key roles. First, they limit the power of the majority to act without regard to the views or interests of others. They ensure that the perspectives of those who are in the minority on a given issue are represented for example, by guaranteeing that opposition voices are heard in the process of law-making. Second, at a more practical level, they ensure that policy is tested and behavior is supervised. This helps to improve the quality of decision-making and prevent behavior that might threaten the integrity or reputation of the political system.⁶ The decline in the rule of law means serious and ongoing violations of human rights. However, a well-executed dismantlement of the rule of law and the constitutional checks and

⁴Pusat Edukasi Anti Korupsi, 2023. Mengenal Mahar Politik, 'Uang Perahu' untuk Berlayar di Pemilu. <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230227-mengenal-mahar-politik--uang-perahu--untuk-berlayar-di-pemilu> June 19th, 2024. (18:57)

⁵ Katili, Y. and Latuda, F., 2022. Sistem Pemilu Proporsional Tertutup Dalam Analisis Pemilu 2024. *Jurnal Analisis Sosial Politik*, 1(2), page.172.

⁶ The Constitution Unit Blog, 2022. Checks and Balances : what are they and why do they matter? 2023. <https://g.co/kgs/DpTdm1n> and constitution@ucl.ac.uk June 8th, 2024 (16:14)

balances can happen, at least in its crucial initial stages, without overt human rights violations.⁷

C. How Can Checks and Balances Be Safeguarded?

The checks and balances mechanism in the process of forming laws has a positive impact, namely preventing domination and arbitrariness by an institution and a negative, namely not finding agreement in negotiations, which has an impact on the formation and termination of the law-making process. Checks and balances play a vital role in a modern democracy. They prevent power from being concentrated too much in one part of the governing system and help to avert the problems that can arise when decisions are taken without proper scrutiny or when high standards of behavior are not enforced.

The DPR as a legislative institution holds the power in forming laws, but in the process of forming laws the president as an executive institution must be involved, especially in the process of discussing bills until mutual agreement is obtained. Approval from the President still plays a role in taking a stance and controlling the implementation and discussion of the Bill so that it reflects the realization of checks and balances between the DPR and the President. The checks and balances mechanism between the legislative and executive institutions in the formation of laws can be implemented even if there is no veto right from the President⁸. The executive has a particularly important part to play in safeguarding checks and balances by engaging with parliamentary scrutiny, behaving appropriately toward the courts and the civil service, and respecting regulators.⁹

Nonetheless there can be drawbacks associated with checks and balances when they are particularly strong. Because they make unilateral action more

⁷ European Parliament 2016. European Parliament Research Service. June 11th 2024 (21:16)https://www.europarl.europa.eu/EPRS/EPRS_STUD_579328_AnnexII_CEPS_EU_Scoreboard_12April.pdf

⁸ E-Journal UNDIP, 2022. Mekanisme Pelaksanaan Prinsip Checks And Balances Antara Lembaga Legislatif Dan Eksekutif Dalam Pembentukan Undang-Undang Dalam Sistem Ketatanegaraan Indonesia. <https://ejournal2.undip.ac.id/index.php/jphi/article/view/13528> June 19th 2024 (20:18)

⁹ The Constitution Unit Blog, 2022. Checks and Balances : what are they and why do they matter? 2023. <https://g.co/kgs/DpTdm1n> and constitution@ucl.ac.uk June 8th, 2024 (16:14)

difficult and allow a greater range of actors to participate in governing, strong checks and balances can increase the risk of gridlock. When designing checks and balances it may therefore be necessary to find a middle ground. This hence focuses on the key institutions that check and balance executive power at a Democratic Country :

1. Parliament
2. The Courts
3. Impartial Officials
4. Media and Civil Society.

Indonesia is a democratic country that implements a Checks and Balances system. The application of the principle of checks and balances is necessary to ensure that there is no overlap between existing authorities. Based on the principle of legal supremacy, the control system in question is a judicial control system. With this checks and balances mechanism, each state institution can monitor and balance the authority of other institutions. This is in accordance with the ideals of reform and the constitution, the 1945 Constitution, in order to realize state administration that is far from arbitrariness and accountability.¹⁰

One of the ways to safeguard these checks and balances is with Countervailing Institutions, which are governmental and non-governmental institutions that balance the distribution of power between the branches of government and ensure that popular priorities are regularly and consistently included in decision-making. They encompass what are traditionally understood as ‘checks and balances’ within the formal structures of government (between the executive, legislative, and judicial branches). However, they did something more

¹⁰ MPR.go.id, 2017. Checks and Balances Dalam Sistem Ketatanegaraan Indonesia. https://mpr.go.id/img/jurnal/file/250322_2017%20-%20Checks%20&%20Balances%20dalam%20Sistem%20Ketatanegaraan%20Indonesia.PDF June 17th 2024 (20:03)

important, namely focusing more on the balance of power between society and the government rather than the distribution of power within the government.¹¹

The quality of the democratic system will be maintained when electoral competition involving political parties takes place within the corridors of the rule of law and produces leaders who place public accountability and responsiveness as the highest value in carrying out the people's mandate as a source of legitimacy and authority. Actors who compete in the electoral mechanism also have a responsibility to maintain quality democracy.¹²

¹¹ United Nations, 2012. Rule of Law and Democracy: Addressing the Gap Between Policies and Practices.

<https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices> June 10th 2024 (12:02)

¹² Kompas.id, 2024. https://www.kompas.id/baca/opini/2024/03/29/demokrasi-menuju-punah?open_from=Search_Result_Page June 21th 2024 (20:33)

SUMMARY

The checks and balances mechanism in Indonesia was established alongside amendments to the 1945 Constitution, aiming to create a clear separation of power among state institutions to avert any single entity from gaining too much power. The point of power separation is to limit each governmental institution's power, allowing them to exercise checks if one of them were to act unaccordingly with the law and ensure diverse views are represented in the democratic process. Despite these reforms, governmental institutions often collude for personal or political gains. Such acts of collusion can be seen today as the recent high costs of political campaigns in Indonesia drove many political candidates to form connections with non-elected groups of people with immense wealth and influence (thus creating deep states). Such acts threaten to dismantle and bypass the existing checks and balances systems by allowing a non-elected entity to manipulate government policies for their own benefits, necessitating reforms to further strengthen the mechanism to ensure accountability and prevent Arbitrariness actions within the elected government. While strong checks and balances can prevent unilateral use of power and ensure high standards of behavior, they can also lead to gridlock and protection of vested interests. Therefore, finding a balance is crucial. To safeguard checks and balances, it is vital for the executive branches of the government (the most active of all the government branches) to respect regulators rights, parliamentary scrutiny, the judiciary, civil services and impartial officials. Undermining these mechanisms risks infringements on the political system and erodes public confidence.

GLOSSARY TABLE

No.	Terminology	Translation	Definition	Example	Source
1.	Arbitrariness	Sewenang-wenang	Existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will	You might complain about the arbitrariness of the rules	Merriam Webster law dictionary
2.	Immense	Sangat luas	Marked by greatness especially in size or degree	He inherited an immense fortune	Merriam Webster dictionary
3.	Infringements	Pelanggaran	The act of infringing : violation	They see it as an infringement on their own freedom of action.	Merriam Webster dictionary
4.	Impartial	Tidak Memihak	Neutral or treating and affecting all equally	You'd better hope the judges are impartial	Merriam Webster
5.	Parliament	Parlemen	A formal conference for the discussion of	the act was passed by the last	Merriam Webster dictionary

			public affairs	parliament of the reign	
6.	Unilateral	Sepihak	Done or undertaken by one person or party	it was a unilateral decision by one member of the alliance	Merriam Webster dictionary
7.	Gridlock	Kemacetan	A traffic jam in which a grid of intersecting streets is so completely congested	We were caught in a gridlock	Merriam Webster Dictionary
8.	Scrutiny	Pengawasan	A searching study, inquiry, or inspection	the actions of ministers are subject to public scrutiny by the press	<i>Black's Law Dictionary, 2nd Ed</i>
9.	Dismantle	Membongkar	To disconnect the pieces of	The mechanic dismantled the engine to repair it	Merriam Webster dictionary
10.	Regulators	Pengatur	One that regulates	State regulators have begun removing hog	Merriam Webster dictionary

				farms located in flood plains.	
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Policy Brief

Lex Digitalis et Securus:

**Regulasi, Supervisi, dan Kolaborasi dalam Memitigasi Tindak Pidana
Pencucian Uang melalui *Cryptocurrency***



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Abstrak

Berkembangnya *cryptocurrency* merupakan suatu inovasi di bidang finansial yang sedang ramai diperbincangkan saat ini, yang mana hal tersebut turut memberikan kemudahan dalam bertransaksi. Dengan menggunakan teknologi *blockchain* dan sistem *peer to peer*, *cryptocurrency* membuat para penggunanya dapat bertransaksi secara global, anonim, dan tanpa melalui pihak ketiga. Namun, dengan segala kemudahan dan sifat anonimitas yang dimilikinya, *cryptocurrency* menjadi peluang bagi pihak-pihak yang tidak bertanggung jawab dalam melakukan kejahatan pencucian uang. Hal tersebut merupakan isu krusial yang saat ini tengah menjadi perhatian negara-negara di dunia untuk memberantas pencucian uang melalui *cryptocurrency*. Oleh karena itu, perlu adanya regulasi, pengawasan, dan kerja sama yang lebih kuat dalam memitigasi tindak pidana pencucian uang melalui *cryptocurrency*.

Kata kunci: *cryptocurrency*, pencucian uang, regulasi, pengawasan, kerja sama.

PENDAHULUAN

I. Latar Belakang

Menuju revolusi industri 5.0, kecanggihan teknologi menawarkan kemudahan di berbagai sektor, salah satunya sektor finansial. Hal tersebut membuka peluang terhadap perdagangan, investasi, dan transaksi global. Namun, di balik kemudahan yang ditawarkan, terdapat celah yang dapat dimanfaatkan oleh pihak-pihak yang tidak bertanggung jawab untuk melancarkan modus kejahatan baru, salah satunya pencucian uang. Perkembangan *cryptocurrency* semakin memperkeruh suasana tersebut. Berdasarkan data dari Chainalysis, kejahatan *cryptocurrency* menunjukkan angka yang cukup besar pada tahun 2023, yang mana terdapat terdapat 24,2 miliar US Dollar transaksi yang diterima melalui alamat terlarang.¹

Karakteristik *cryptocurrency* yang bersifat anonimitas, mudah dijangkau secara global, waktu transaksi yang fleksibel, serta transaksi yang sulit diakses oleh otoritas penegak hukum membuka peluang bagi pihak-pihak yang tidak bertanggung jawab untuk menggunakannya sebagai media pencucian uang.² Hal tersebut tentunya menjadi kekhawatiran utama karena dana yang diperoleh dari berbagai kegiatan ilegal dapat disamarkan sedemikian rupa agar terlihat sah dan legal. Maraknya tindak pidana pencucian uang (TPPU) melalui *cryptocurrency* merupakan isu krusial yang menjadi perhatian global saat ini sehingga perlu adanya upaya kolektif dalam mengatasi permasalahan tersebut. Sebagai salah satu negara anggota *Asia Pacific Group on Money Laundering* sejak tahun 2000,³ Indonesia memiliki peran yang cukup besar untuk turut menanggulangi maraknya TPPU *cryptocurrency* melalui serangkaian upaya yang diperlukan.

¹ Chainalysis, *The 2024 Crypto Crime Report* (Chainalysis, 2024) 5.

² Adhitya Yuda Prasetya, *et.al.*, 'Model Pendanaan Terorisme melalui *Cryptocurrency*' (2021) 3(1) *Journal of Terrorism Studies* 1, 4.

³ Yunus Husein, 'Tindak Pidana Pencucian Uang (Money Laundering) dalam Perspektif Hukum Internasional' (2004) 1(2) *Jurnal Hukum Internasional* 342, 343.

PEMBAHASAN

II. Analisis

A. *Status Quo* Pengaturan *Cryptocurrency* dan Penanggulangan TPPU di Indonesia

Berdasarkan Pasal 1 Peraturan Menteri Perdagangan Nomor 99 Tahun 2018 tentang Kebijakan Umum Penyelenggaraan Perdagangan Berjangka Aset Kripto (*Crypto Asset*) yang mengacu pada Undang-Undang Nomor 10 Tahun 2011, saat ini aset kripto ditetapkan sebagai komoditi yang dapat dijadikan subjek kontrak berjangka (komoditi berjangka) dan diperdagangkan di bursa berjangka. Aset kripto tersebut bukanlah mata uang yang sah dan tidak bisa dipergunakan sebagai alat pembayaran karena hal tersebut bertentangan dengan ketentuan Pasal 1 ayat (1) dan (2) Undang-Undang Nomor 7 Tahun 2011 tentang Mata Uang. Hal tersebut dipertegas oleh pernyataan dari Bank Indonesia melalui siaran pers pada tahun 2014 lalu serta Peraturan Bank Indonesia Nomor 18/40/PBI/2016 bahwa segala *virtual currency* bukanlah mata uang dan alat pembayaran yang sah di mata hukum.⁴ Kemudian, pengaturan terkait pembinaan, pengawasan, serta pengembangan aset kripto di Indonesia pada saat ini berada di bawah wewenang Kepala Badan Pengawas Perdagangan Berjangka Komoditi (Bappebti).⁵

Pengaturan terkait *cryptocurrency* sebagai komoditas di Indonesia cukup berbeda dengan Amerika Serikat, Kanada, dan juga Australia, yang mana ketiga negara tersebut mengatur *cryptocurrency* sebagai komoditas, sekuritas, maupun nilai yang dapat menggantikan mata uang. Hal tersebut dapat dilihat melalui tabel perbandingan berikut:

⁴ Farrel Christian Sioe dan Putu Edgar Tanaya, 'Regulasi Hukum *Cryptocurrency* dan Pencegahan Tindak Penyalahgunaannya di Indonesia' (2024) 12(6) Jurnal Kertha Semaya 1375, 1379.

⁵ Pasal 2 Peraturan Menteri Perdagangan Nomor 99 Tahun 2018 tentang Kebijakan Umum Penyelenggaraan Perdagangan Berjangka Aset Kripto (*Crypto Asset*).

Tabel I: Pengaturan *cryptocurrency* di Amerika Serikat, Kanada, Australia, dan Indonesia.⁶

Penetapan <i>cryptocurrency</i>	Amerika Serikat	Kanada	Australia	Indonesia
Komoditas (<i>crypto-asset</i>)	Mengatur	Mengatur	Mengatur	Mengatur
Sekuritas (token ICO)	Mengatur	Mengatur	Mengatur	Belum diatur
Nilai yang menggantikan mata uang (<i>cryptocurrency</i>)	Mengatur	Mengatur	Mengatur	Dilarang

Selain Peraturan Menteri Perdagangan Nomor 99 Tahun 2018, Indonesia juga turut mengesahkan beberapa peraturan turunan mengenai aset kripto, yaitu Peraturan Bappebti Nomor 2 Tahun 2019, Peraturan Bappebti Nomor 3 Tahun 2019, Peraturan Bappebti Nomor 5 Tahun 2019, Peraturan Bappebti Nomor 6 Tahun 2019, Peraturan Bappebti Nomor 9 Tahun 2019, dan Peraturan Bappebti Nomor 2 Tahun 2020. Sayangnya, peraturan-peraturan tersebut hanya mengatur mengenai penyelenggaraan perdagangan aset kripto sebagai komoditi berjangka. Terkait dengan penanggulangan TPPU *cryptocurrency* sejauh ini hanya diatur dalam Peraturan Bappebti Nomor 6 Tahun 2019. Peraturan Bappebti *a quo* hanya berisi petunjuk teknis bagi perusahaan-perusahaan perdagangan aset kripto untuk melakukan tindakan pencegahan pencucian uang semata tanpa adanya penerapan sanksi bagi pihak-pihak yang melanggarnya. Oleh karena itu, diperlukan adanya regulasi, pengawasan, serta penjatuhan sanksi yang lebih kuat dalam menanggulangi maraknya TPPU *cryptocurrency*.

B. Regulasi dan Supervisi *Travel Rule*, *Anti Money Laundering*, dan Prinsip *Know Your Customer*

Dalam memitigasi TPPU *cryptocurrency*, perlu adanya penyesuaian terhadap kebijakan pemerintah untuk ditetapkan. Jika mengacu pada beberapa ketentuan dari negara lain, Indonesia belum masih memiliki celah terhadap regulasi *travel rule*, *anti money laundering*, dan prinsip *know your customer*.

⁶ Mutiara Anisah, 'Pengaturan Tindak Pidana Pencucian Uang (TPPU) melalui Cryptocurrency di Indonesia: Studi Perbandingan Negara Amerika Serikat, Kanada, dan Australia' (Skripsi, Universitas Gadjah Mada 2022).

Ketiga hal tersebut perlu diterapkan oleh Pemerintah Indonesia untuk dapat mendeteksi adanya transaksi keuangan mencurigakan dalam *cryptocurrency*.

Travel rule akan membuat pelacakan dan perpindahan uang dari satu negara ke negara lainnya menjadi lebih mudah dengan memperlihatkan identitas pelaku transaksi *cryptocurrency*. Hal ini dapat diimplementasikan dengan membuat suatu badan khusus dari pemerintah yang akan melacak pergerakan uang tersebut, seperti halnya Amerika Serikat yang membentuk *National Cryptocurrency Enforcement Team*.⁷ Meskipun terdengar sulit dan kontradiktif dengan sifat anonimitas dari *cryptocurrency* itu sendiri, tetapi *travel rule* perlu untuk diterapkan untuk melacak dan melaporkan transaksi mencurigakan dalam *cryptocurrency*. Melalui *travel rule*, regulasi *anti money-laundering* (AML) dapat diterapkan dengan adanya data terkait perjalanan uang yang mana hal tersebut selaras dengan pendekatan *follow the money*. AML mewajibkan adanya suatu pelaporan atas transaksi antar pihak sehingga memudahkan pemerintah dalam mengidentifikasi adanya transaksi yang mencurigakan.

Setelah regulasi *travel rule* dan AML tersebut diterapkan, pemerintah juga harus mewajibkan setiap penyedia jasa *cryptocurrency* untuk menerapkan prinsip *know your customer* (KYC). KYC menerapkan pemverifikasian data pelaku transaksi sehingga datanya dapat terbaca di sistem pemerintah dan memudahkan pemantauan data transaksi. Identitas pelaku transaksi *cryptocurrency* harus dapat dibuktikan dengan keberadaan dokumen-dokumen pendukung. Kemudian, penyedia jasa *cryptocurrency* wajib meneliti kebenaran dokumen pendukung identitas pelaku transaksi *cryptocurrency*. Dokumen pendukung yang dimaksud seperti identitas yang dibuktikan melalui KTP, keterangan mengenai pekerjaan yang dibuktikan melalui NPWP, spesimen tanda tangan, dan tujuan dari transaksi untuk pelaku transaksi *cryptocurrency* perseorangan. Dokumen pendukung untuk pelaku transaksi *cryptocurrency* dari perusahaan yang diperlukan adalah akta pendirian perusahaan, izin usaha, spesimen tanda tangan dan kuasa kepada pihak-pihak yang mempunyai wewenang bertindak untuk dan atas nama perusahaan, keterangan sumber dana dan tujuan transaksi *cryptocurrency*.

⁷ Mutiara Anisah, *loc.cit.*

C. Kolaborasi dengan Penyedia Jasa *Cryptocurrency* dan Instansi Terkait

Setelah adanya regulasi yang kuat, kerja sama dengan instansi terkait perlu dilakukan guna memperkuat penanggulangan TPPU *cryptocurrency*. Modus baru TPPU berbasis perlu untuk diawasi lebih lanjut. Namun, satu hal yang belum dapat dimaksimalkan adalah bentuk kerja sama antara pihak jasa penyedia *cryptocurrency* dengan pihak pemerintah guna mengawasi setiap transaksi yang dilakukan. Salah satu lembaga yang dapat menjalankan kerja sama dengan pihak penyedia jasa *cryptocurrency* untuk melakukan pengawasan terkait segala transaksi yang dilakukan oleh pihak penyedia jasa *cryptocurrency* dengan pelaku transaksi saat ini adalah Bappebti. Perlu diketahui, bahwa berdasarkan Keputusan Kepala Bappebti Nomor 01/BAPPEBTI/SP-BBAK/07/2023 pengawasan tersebut akan berpindah kepada Otoritas Jasa Keuangan (OJK). Hal tersebut merupakan salah langkah konkrit guna mempermudah segala pengawasan dan penyelidikan jika adanya transaksi yang tidak wajar dalam jasa penyedia *cryptocurrency*.

Beberapa kerja sama lainnya adalah melakukan kerja sama dengan Bappebti guna memilah mana jasa penyedia *cryptocurrency* yang telah memenuhi syarat atau tidaknya sebagai jasa penyedia *cryptocurrency*. Setiap penyedia jasa *cryptocurrency* yang ingin mendaftarkan platformnya wajib memenuhi beberapa syarat agar dapat berjalan secara sistematis dan teregulasi dengan baik. Adapun, kerja sama lanjutan lainnya adalah melakukan kerja sama dengan Kementerian Komunikasi dan Informatika (Kominfo) untuk membatasi atau memblokir jasa-jasa penyedia *cryptocurrency* yang tidak terdaftar dalam Bappebti. Kerja sama tersebut guna menekan adanya tindak pidana pencucian uang melalui platform-platform yang ilegal. Dengan demikian, pada transaksi yang dapat dilakukan oleh para pelaku transaksi adalah melewati jasa penyedia *cryptocurrency* yang telah terdaftar dan teregulasi, dan nantinya setiap transaksi yang dilakukan mendapat pengawasan oleh OJK.

PENUTUP

III. Kesimpulan

Digitalisasi keuangan menemui tantangan dalam hal maraknya pencucian uang melalui *cryptocurrency*. Di Indonesia, *cryptocurrency* sendiri bukanlah mata uang maupun alat transaksi, melainkan komoditas. Indonesia masih memerlukan beberapa regulasi baru guna menanggulangi TPPU melalui *cryptocurrency*. *Travel rule* menjadi langkah pertama dalam pembuatan regulasi ini, yang mana pemerintah perlu mengetahui data dari transaksi yang dilakukan oleh pelaku transaksi. Kedua, penguatan regulasi *anti money laundering* akan membantu pemerintah dalam mengawasi dan melaporkan transaksi mencurigakan dalam *cryptocurrency*. Ketiga, penerapan prinsip *know your rights* untuk mendapatkan data konsumen dan perlindungan data.

Pemerintah juga perlu menjalin kerja sama dengan beberapa pihak terkait, seperti penyedia jasa *cryptocurrency*, Bappebti, OJK, dan Kominfo guna memperkuat supervisi dan mitigasi terhadap maraknya TPPU melalui *cryptocurrency*.

IV. Rekomendasi

Beberapa rekomendasi kebijakan yang dapat diimplementasikan oleh Pemerintah Indonesia dalam memitigasi TPPU *cryptocurrency*:

- 1) Penguatan regulasi terkait *travel rule*, *anti money laundering*, dan *know your customer* untuk memudahkan pemerintah dalam melacak transaksi *cryptocurrency* yang mencurigakan;
- 2) Kerja sama untuk melakukan pengawasan dan penanggulangan TPPU melalui media *cryptocurrency*;
- 3) Penetapan *Initial Exchange Offering* (IEO) yang lebih adaptif di Indonesia sehingga membuat pasar *cryptocurrency* yang lebih teratur melalui adanya bursa *cryptocurrency* berdasarkan Keputusan Kepala Bappebti Nomor 01/BAPPEBTI/SP-BBAK/07/2023; dan
- 4) Pembentukan satgas khusus dalam memitigasi, mengawasi, dan menanggulangi transaksi *cryptocurrency* di Indonesia.

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